DOCUMENT RESUME

ED 216 424 EA 014 594

AUTHOR Gurwitz, Aaron S.; Darling-Hammond, Linda
TITLE Maintenance of Effort Provisions: An Instrument of Federalism in Education.
INSTITUTION Rand Corp., Santa Monica, Calif.
SPONS AGENCY Department of Education, Washington, DC. Office of Planning, Budget, and Evaluation.
REPORT NO ISBN-0-8330-0327-5; Rand-R-2684-ED
PUB DATE Jun 81
CONTRACT 300-79-0522
NOTE 75p.
AVAILABLE FROM Publications Department, The Rand Corporation, 1700 Main Street, Santa Monica, CA 90406 ($7.50).

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Compliance (Legal); Educational Finance; Elementary Secondary Education; *Federal Aid; Federal Programs; *Federal Regulation; Federal State Relationship; Government Role; Public Policy; School Funds; School Support
IDENTIFIERS Elementary Secondary Education Act Title I

ABSTRACT

Educational agencies accepting federal funds for special programs, particularly under Title I of the Elementary and Secondary Education Act, are often required to prove maintenance of effort. That is, funds generated from state and local sources cannot be decreased and the slack taken up with the federal moneys. The Rand Corporation study reported in this document found that, due primarily to economic and demographic changes, the rate of noncompliance with these requirements has begun to increase and will probably continue to do so. A trend toward tightening the requirements and centralizing the overseeing authority during recent years has made the situation even more difficult. Drawing on documentary data and interviews with officials of the U.S. Office of Education and of state education agencies in 10 states facing compliance problems, the study reveals that a review of the requirements may be in order. The study team offers five alternative policy approaches for consideration: (1) continue to enforce current requirements; (2) grant discretionary waiver authority to the Secretary of Education; (3) return waiver authority to the states; (4) modify the requirements and the penalties for noncompliance; and (5) develop a unified intergovernmental aid policy at the federal level. (Author/PGD)

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Maintenance of Effort Provisions: An Instrument of Federalism in Education

Aaron S. Gurwitz and Linda Darling-Hammond
with the assistance of Sara R. Pease

EA 014 594

Rand

This project has been funded at least in part with Federal funds from the Office of Education, Department of Health, Education, and Welfare under Contract No. 300-79-0522.

Library of Congress Cataloging in Publication Data

Gurwitz, Aaron S.
Maintenance of effort provisions.

"R-2684-ED."
Bibliography: p.
1. Federal aid to education--United States.
2. Education--United States--Finance.
I. Darling-Hammond, Linda, 1951- .
II. Pease, Sara R., 1953- . III. United States. Dept of Education. IV. Rand Corporation. V. Title.
LB2827.4.G87 379.1'21'0973 81-10521
ISBN 0-8330-0327-5 AACR2

The Rand Publications Series: The Report is the principal publication documenting and transmitting Rand's major research findings and final research results. The Rand Note reports other outputs of sponsored research for general distribution. Publications of The Rand Corporation do not necessarily reflect the opinions or policies of the sponsors of Rand research.

Published by The Rand Corporation

R-2684-ED

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June 1981

Prepared for the U.S. Department of Education

Rand
SANTA MONICA, CA. 90406

7.50

PREFACE

This report was commissioned by the Office of the Assistant Secretary of Education for Planning and Budget, U.S. Department of Education. Interest has been expressed by a number of local, state, and federal education policymakers in the possibly adverse consequences of the enforcement of increasingly stringent maintenance of effort (MOE) requirements.[1] In response to this interest and in anticipation of the planned reauthorization of the Elementary and Secondary Education Act (ESEA) in 1982, the Assistant Secretary's Office requested that a team of analysts working under The Rand Corporation's Educational Policy Development Center on Equal Educational Opportunity for Disadvantaged Children investigate the current operation of maintenance of effort requirements.

The resulting study concluded that increasing numbers of maintenance of effort violations, particularly under Title I of the ESEA, will pose significant federal policy problems in the immediate future. Since this research was completed, final regulations for Title I have been issued which include a more stringent maintenance of effort standard than before. This change further strengthens the authors' findings that widespread violations will occur, sometimes with inequitable results that are at odds with other federal policy objectives.

This research was motivated by the convergence of two sets of events: the more rigorous maintenance of effort rules called for by the 1978 Education Amendments and a trend toward fiscal containment of education spending in many states and localities. These events led us to evaluate the requirements' effects with an eye toward recommending modifications that might minimize potentially inequitable results of strict rule enforcement. There was never any question, when we designed and conducted the study, of the legitimacy of the concept of federal aid additivity which underlies maintenance of effort provisions. Our research was meant to illuminate the effects of particular strategies for ensuring additivity, rather than to critique the concept of maintenance of effort itself. Thus, our recommendations focus upon means for modifying federal maintenance of effort rules so that they can continue to advance the dual goals of federal fund additivity and provision of services to needy populations. All of the state officials with whom we spoke endorsed these federal goals, and their suggestions for change also revolved around the specific instruments used for implementing those intentions equitably and efficiently.

As work on this project and a number of other Policy Center projects advanced, it became apparent that the reauthorization of ESEA will involve a fundamental rethinking of the role of the federal government in the U.S. elementary and secondary education system. The present report analyzes one aspect of that role—federal financial regulation of state and local education agencies. Other aspects of the federal role and its impact on schools and school districts are discussed in the following Policy Center reports: Jackie Kimbrough and Paul Hill, *The Aggregate Effects of Federal Education Programs,* R-2638-ED (forthcoming); Arthur Wise, *Selective Deregulation in a Federal System: Ensuring Equal Educational Opportunity and Improving Educational Quality* (forthcoming).

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[1]MOE requirements are intended to ensure that federal aid to state or local education programs increases the total amount spent on an aided activity. Recipients must maintain their own level of non-federal spending from one year to the next.

SUMMARY

Nearly all of the major federal education programs require recipients to maintain their level of non-federal spending from one year to the next in order to continue receiving federal funds.[1] These maintenance of effort (MOE) requirements apply variously to expenditures for public education or for particular program purposes and may be directed at the state or local education agency or both. Maintenance of effort requirements are typically accompanied by some combination of additional provisions designed to ensure "additivity" of federal funds. These include the requirements that federal funds "supplement, not supplant" state and local funds; that federal funds be used only for "excess costs" of funded programs; that "comparability" of state and local spending be maintained among schools receiving federal funds; and that recipients provide "matching" funds for federally assisted programs. Each of these requirements is associated with a large number of specific regulations defining exactly what behavior is required of recipient school districts.

The fundamental purpose of all of these "additivity" requirements is to ensure that federal efforts increase spending on certain programs. Congress intends neither to provide local tax relief nor to subsidize, indirectly, unaided programs.

MAINTENANCE OF EFFORT REQUIREMENTS AS POLICY INSTRUMENTS

Until very recently, the intention behind maintenance of effort provisions was almost universally accepted as a legitimate federal concern. Federal *education* programs should not, most agreed, become conduits for local tax relief or indirect subsidies for non-school local government services. Maintenance of effort and other additivity provisions may, in fact, be the most effective means for attaining this particular federal objective. Nevertheless, maintenance of effort provisions are, by general agreement, rather clumsy policy instruments. For example, it is unlikely that current MOE requirements can achieve their intended effects because they do not correct for inflation. Federal funds can be used to supplant local revenues that would have been raised to make up for the effects of inflation.

Even if these provisions did have their intended effect, the enforcement of maintenance of effort requirements could induce two inequitable or counterproductive side effects:

1. A district with a declining tax base would actually be required to *increase* local tax effort in order to maintain compliance while a district with a growing tax base could decrease tax effort and still maintain expenditure levels.
2. Because MOE requirements force a district to maintain any expenditure increase forever, the provisions may induce district decisionmakers to forgo some increases in spending.

Furthermore, the process of enforcing these provisions may bring about its own undesirable

[1]Specific statutory maintenance of effort provisions apply to programs funded by ESEA Titles I and IV, the Vocational Education Act, the Indian Elementary and Secondary School Aid Act, the Adult Education Act, and the Emergency School Assistance Act. The "supplement-not-supplant" provision of the Education for the Handicapped Children Act has been interpreted as being equivalent to a maintenance of effort requirement.

consequences. Even though unintentionally noncompliant districts (i.e., districts whose noncompliance is caused by inability rather than unwillingness to maintain spending) are entitled to waivers, grounds for waivers are narrow, waiver procedures are time consuming, and waivers cannot accommodate long-term problems of economic decline because they are not renewable. Finally, the sanction for noncompliance—total denial of federal funds—really hurts no one but the intended program beneficiaries.

Whether or not these potentially troublesome aspects of MOE enforcement actually constitute a problem for federal education policymakers depends on whether compliance with the provisions is difficult for a significant number of school districts and whether changes in law or regulation might alleviate some of the inequitable or counterproductive consequences of the provisions. The purpose of this study was to determine whether, in fact, compliance with the provisions is difficult—whether the incidence of noncompliance is widespread or isolated; increasing or decreasing. We also sought to determine the causes of whatever noncompliance we found. Are violations instances of intentional supplantation or are states and districts caught up in forces beyond their control? Are the regulations strict enough to ensure that federal intentions are realized, but flexible enough to allow equitable enforcement?

A Spate of Noncompliance

The potential inequities and inefficiencies of MOE enforcement made little difference until recently. High rates of price inflation and general trends of increasing school expenditures resulted in extremely few instances of noncompliance. Between FY 1977 and 1980, only 28 local education agencies (LEAs) fell out of compliance with MOE provisions for ESEA Title I (compensatory programs for educationally disadvantaged students). Of these, 25 received waivers from the U.S. Office of Education. Noncompliance under other education programs was rarer still.

In FY 1981 alone, by contrast, we identified more than 100 districts in only five states that will be out of compliance with the Title I requirement. The actual incidence of noncompliance nationwide is certain to be much higher. Approximately 85 of the noncompliant districts we identified are in California. The problem is, however, not confined to one state. Education spending has slowed in many states as regional economic conditions have diminished tax bases and revenues. In others, like California, fiscal limitation measures have contributed to LEA noncompliance when the state's efforts to compensate for lost local revenues have been insufficient to offset the combined effects of tax limits and other local conditions, such as enrollment shifts. In still other cases, school funding formulas dependent on enrollments, staffing ratios, or tax effort have caused sudden decreases in state aid to districts with changing demographic or economic characteristics. Local levy and school budget defeats constitute an increasingly serious problem in many districts, particularly those which have maintained a high level of education and public service spending in the past. Small districts are especially vulnerable to spending decreases that result in noncompliance in all of these situations, as are districts that rely heavily on state aid (delivered by formula or annual "emergency" allocations).

Although compliance failures began to appear in larger numbers in FY 1981, the number of affected districts is still relatively small and only the tiniest proportion of students will be affected. The incidence of noncompliance we found would not be especially troublesome except that we believe this is the beginning of a trend that will affect many more states and other federal education programs. We expect that in the near future a number of states will fall out of compliance with Title IVB of ESEA (materials and equipment). There is also some potential

for noncompliance under the Vocational Education Act and PL 94-142 (handicapped education), but we foresee no immediate widespread problem. The ESAA and Indian Education (IESSAA) programs include MOE provisions identical to that of Title I, so districts experiencing Title I compliance problems will be in danger of losing these funds as well.

The phenomenon of fiscal retrenchment in education is likely to continue as economic conditions and fiscal limitation measures (now present in half the states) cause a reshuffling of federal, state, and local roles for public service provision. As these readjustments occur, many districts will suffer at least short-run budget decreases produced by a variety of intertwined fiscal, legal, and political conditions unique to each state and locality.

Significant and highly visible instances of MOE noncompliance are likely to emerge in California, when the state surplus which has funded the Proposition 13 bailout runs out, and in Massachusetts, where a state response to the passage of Proposition 2½ has not yet been fashioned. Several large, economically distressed cities in the Northeast and Midwest have relied on state emergency allocations for several years to rescue them from noncompliance, but their economic health—and that of the states in which they are located—grows more precarious with each year. Increasing reliance on state education funding nationwide places more and more LEAs in the position of exerting diminishing control over their education budgets and, consequently, their ability to comply with MOE requirements.

THE EVOLUTION OF THE REQUIREMENTS: A TIGHTENING VISE

Some of the reductions in school spending we have begun to observe would not have brought districts out of compliance with pre-1978 MOE provisions. Other currently noncompliant districts would have qualified for waivers under pre-1978 regulations.

Language in the 1978 legislative history of ESEA clearly required a tightening of MOE regulations. A "slippage" factor in Title I, which had allowed districts to reduce spending by 5 percent a year and still qualify for federal assistance, was reduced to 2 percent.[2] The slippage provisions for Vocational Education and ESEA Title IV were removed entirely. Waiver grounds were narrowed to disqualify districts where voters have rejected local tax levies or approved tax limitations.

The evolution of MOE requirements has always been in the direction of greater stringency and more centralized enforcement. The ESEA of 1965 established only one requirement which attempted to ensure that federal funds were not used to substitute for local tax revenues. A vaguely worded MOE provision was to be enforced by the states. State education authorities (SEAs) were empowered to grant discretionary waivers in "unusual circumstances." As time went by, other such "additivity" requirements—"supplement-not-supplant," "excess cost," and "comparability" provisions—were appended to the law. In 1976, allowable grounds for waivers were explicitly delimited for the first time and the Commissioner of Education was granted sole authority to issue waivers.

This tightening of the requirements and centralization of waiver authority took place over a period when school budgets were increasing fairly rapidly almost everywhere. The regulations have evolved to the point where, now that school budgets are beginning to be reduced, neither the Education Department nor the SEAs have much discretion in enforcing MOE. At least 100 districts, some of them very needy, will be denied federal assistance for at least one

[2]The final regulations implementing the 1978 Amendments, which were issued after work on this report was completed, eliminated the slippage factor entirely.

year. *There is now no legal way, save by act of Congress, to avoid whatever inequitable or counterproductive consequences may accompany strict enforcement.*

ANALYSIS OF THE REQUIREMENTS: WHAT DO THEY INTEND?

Maintenance of effort requirements are the most easily monitored of the additivity provisions. Enforcing supplement-not-supplant or comparability regulations requires a careful examination of detailed school district resource allocations. MOE enforcement merely involves monitoring a single number from year to year. The basic function of MOE provisions may, therefore, be to provide an inexpensive and nonintrusive mechanism for monitoring and enforcing additivity.

The Title I, ESAA, and IESSAA MOE provisions, however, do something different from other federal education regulations. To qualify for assistance under these programs, a school district must maintain expenditures on "free public education." A district that has maintained spending for all categorized students (the handicapped, limited English speaking, Title I eligibles, etc.) and programs (library books, vocational education, etc.) but has reduced spending on general instruction for uncategorized pupils would be in compliance with all federal regulations except maintenance of effort for Title I, ESAA, and IESSAA. All other requirements are intended to protect certain federally assisted programs or certain specific groups of children. Title I MOE and similar provisions extend some federal protection to all students and all programs.

One possible reason for this special characteristic of Title I MOE is that the requirement was designed in 1965 when many viewed ESEA as a general aid program. If Congress's intent was to assist all students and all services in certain districts, then the Title I MOE provision was probably appropriate. To the extent that general aid is no longer a federal intention, the Title I MOE provision may have become inappropriate.

ANALYSIS OF ALTERNATIVE POLICIES

Congress can expect calls for some quick remedial action to avoid widespread denial of Title I funds over the next few years. Instances of state and local noncompliance with other programs' MOE requirements may add to the administrative burden of waiver processing and the clamor for constituent relief. Ordinarily, violation of a law is no justification for its modification, and in enacting any changes Congress will wish to ensure that federal educational spending is used for the established categorical purposes. Nevertheless, given the possibility of inequitable or counterproductive consequences of strict enforcement of the current regulations and the possibility that, in the case of Title I, the MOE requirement addresses an abandoned intention of federal education policy, an objective case can be made for some change in the requirements.

Our analysis suggests that each alternative approach described below could exert an important influence on the evolution of the federal role in education and of the structure of the federal system itself. The alternative approaches are applicable either to the current structure of categorical programs or to the Reagan Administration's proposed block grant, provided that Congress wishes to ensure the additivity of federal education aid.

The five alternative approaches are:

1. *Take no action. Enforce current regulations.* By denying some 100 districts Title I assistance for FY 1982, Congress will be sending the clear signal that, whatever may be the

other consequences of fiscal containment, education spending must not be decreased. However, the Congressional committees involved in education policy must be aware that other federal aid programs also contain MOE provisions and that highway interests, health interests, higher education interests, and so on will be attempting to protect themselves with strictly enforced, stringent federal regulations. One result of strict enforcement, therefore, might be that the allocation of the new fiscal stringency across local government programs will be determined on the federal, not the local, level. This would constitute a major change in the structure of the U.S. federal system. Furthermore, in places where fiscal discretion is severely limited, it may not be possible for the locality to meet all federal requirements. If so, Congressional committees engaged in a zero sum game of MOE enforcement might generate the least desirable outcome.

2. *Grant discretionary waiver authority to the Secretary of Education.* Strict enforcement of MOE provisions can have inequitable consequences that do not fit neatly into an explicit set of waiver grounds. By granting the Secretary authority to grant waivers in cases of "gross inequity," for example, Congress might avoid some of the adverse consequences. However, such a provision would establish the Secretary of Education as the final arbiter of budgetary decisions in fiscally constrained, federally dependent school districts. Each year a complex set of precedents would be established prescribing how much such districts should spend and how they should allocate their resources. Again, this would amount to a significant restructuring of federalism.

3. *Return waiver authority to the states.* Most regulations appended to federal education aid programs are administered by SEAs subject to federal audit. By returning to the pre-1976 situation, in which states could grant discretionary waivers of MOE requirements, Congress might avoid some of the inequities of too strict enforcement without transferring detailed decisionmaking to the federal level. Education interests, however, are likely to object to this approach. In a period when local public expenditures are threatened, no interest group will be willing to surrender any political leverage it might have. Any move to "deregulate" only educational spending could be viewed as a form of unilateral political disarmament.

4. *Modify the requirements and/or penalties for noncompliance.* Both the incidence of noncompliance and the potential adverse effects of rule enforcement might be minimized by changes in the standards for MOE compliance or the sanctions for noncompliance. Many of the state officials we interviewed recommended changes such as a return to earlier slippage allowances or the use of multi-year averaging as means for allowing some flexibility in year-to-year spending levels while retaining the MOE concept. Many also suggested a move to pro rata reductions rather than a total withholding of federal funds in cases of noncompliance. Where a state action is responsible for LEA noncompliance, the state's federal program allocation could be reduced by the amount of LEA shortfalls; then the full burden of the penalty would not fall on individual districts already suffering from state-induced revenue losses.

All of these modifications would retain the character of MOE requirements while diminishing to varying degrees their potency for affecting budgetary decisions at the local level. On the one hand, the changes might be seen as diluting the effectiveness of MOE provisions for protecting education programs from cuts. On the other hand, they might provide relatively simple means for minimizing the potentially inequitable consequences of strict enforcement of federal spending requirements during a time of necessary readjustments to rapidly changing fiscal, economic, and political conditions in a number of states and localities.

5. *Develop a unified Congressional intergovernmental aid policy.* Each of the first three alternative approaches involves the very nature of the federal role in our system of governments. The first two alternatives could lead to further centralization of decisionmaking in areas where the federal role has traditionally been secondary. Returning authority to the states, the

third alternative, may be unrealistic because no single interest group will want to relinquish any of the political support it receives from the federal government.

The balance of powers among central and local governments is one of the fundamental principles on which our political system is based. The separate evolution of federal aid programs—in education and other fields—has had a major, and probably unintended, impact on that balance of powers. If the decentralized structure of our system of governments is worth retaining, then some conscious thought should be devoted to how any given policy issue affects federalism.

None of these possible outcomes are certain. This report contains evidence that the incidence of violation of MOE provisions is increasing due to new political and economic fiscal constraints. Informed speculation suggests that the trend toward fiscal containment on the state and local levels has not yet peaked and that therefore we can expect a continued increase in the incidence of noncompliance. We do not know now, but further research could tell us, what the exact consequences of fiscal containment are and how important the federal government's role is in determining the allocation of scarcity.

As education committees consider the spate of MOE compliance failures, they should consider the potential benefits of some across-the-board Congressional response to fiscal containment on the state and local levels.

ACKNOWLEDGMENTS

A large number of individuals contributed to the preparation of this report. We are especially grateful to the numerous officials of the U.S. Education Department and of the State Education Agencies who devoted considerable time to our interviews and provided extensive supporting information.

Comments by several staff members of Rand and the Education Department on an earlier draft of this report improved its contents and organization materially. We particularly wish to thank Lorraine McDonnell and Rick Victor of Rand for their thorough and incisive reviews and Frank Nassetta of the Office of the Assistant Secretary of Education for Planning and Budget for his guidance and comments.

We are grateful to Paul Hill, Director of Rand's Center for Educational Policy Development, for his always sound and always unobtrusive leadership.

Finally, we wish to thank Nancy Davis and Barbara Eubank for their patience in preparing draft after draft and revision after revision.

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I. INTRODUCTION

Most federal intergovernmental aid programs are accompanied by maintenance of effort (MOE) provisions. As a precondition for receiving aid, the recipient governments must not reduce their own financial contribution in support of the aided activity. These regulations are meant to ensure that federal money is used to supplement local revenues, not to supplant them. In other words, *Congress intends that federal aid be used to increase expenditures on the targeted activities* and not to provide local tax relief or to indirectly subsidize other unaided local government activities.

Education Program MOE requirements take one of two forms. To qualify for most categorical federal programs, state or local education agencies[1] (SEAs or LEAs) must demonstrate that expenditures from local and state sources for that particular program category have not decreased from one year to the next. For example, to receive federal aid for vocational education, LEAs must not decrease their local contribution (from state and local sources) to vocational education financing. To receive aid under ESEA Title I, the Emergency School Assistance Act (ESAA), or the Indian Elementary and Secondary School Aid Act (IESSAA), the district must not decrease its spending total or per pupil spending from state and local sources on "free public education."

Such provisions and regulations, appended to federal school aid legislation since 1965, have not been a problem in the past. Only a few scattered small districts have ever been denied funds under these provisions. In fact, there was reason to believe that MOE provisions had little effect at all on school district spending patterns or, indeed, on any other aspect of school district behavior.

Recently, however, policymakers in Washington, in state capitals, and in school district administrative offices have begun to look at these provisions with renewed interest for several reasons. First, the most recent reauthorization of the Elementary and Secondary Education Act significantly tightened the MOE provisions, making it relatively more difficult for districts to comply. Second, the United States has entered a period of fiscal containment. The post-World War II growth in government expenditures on all levels has begun to slow (Pascal et al., 1979), and some categories of spending have decreased. This trend is particularly evident with respect to state and local governments. Finally, these events have raised concerns that maintenance of effort provisions may be very ineffective ways of attaining the intent of Congress, and they induce unintended consequences which work at cross-purposes with other federal policy objectives.

This study, designed in response to policymakers' new interest in MOE requirements, had three main purposes:

1. To analyze the structure and evolution of the legislative and regulatory requirements in order to determine the specific intentions that motivated the design of these provisions.
2. To assess the incidence and etiology of noncompliance.
3. To analyze alternative policy responses in the event that we found a substantial number of districts were not complying with requirements whose enforcement might have inequitable and/or inefficient consequences.

[1]For ESEA IV the SEA is accountable. For other programs, it is the LEA.

THE POTENTIAL EQUITY AND EFFECTIVENESS OF MOE PROVISIONS AS POLICY INSTRUMENTS

The intended effect of MOE requirements is to ensure that federal aid increases the total amount spent on the aided activity. Given this objective, the problem is to devise a policy instrument that will ensure this "additivity" of federal funds without causing inequitable or inefficient side effects. Maintenance of effort requirements, along with the compliance monitoring and enforcement provisions accompanying them, are among the instruments Congress has chosen to obtain the objective of ensuring supplementarity. Indeed, under some circumstances MOE provisions would be the optimal instrument for achieving this objective. That is, if the rate of inflation were zero, if expenditures exactly measured effort, if most increases in school funding came from the federal government, if any excusably noncompliant district could easily obtain a waiver, and if educational needs and priorities never changed, then MOE would be a perfect policy instrument. That these conditions do not exist in reality limits the effectiveness or equity of MOE as a policy instrument.

One source of ineffectiveness is that MOE provisions and regulations do not allow for inflation. An LEA that merely maintains a constant level of dollar expenditure from one year to the next would be in compliance. This means that during a period of 10 percent annual inflation, school districts can reduce their purchases of goods and services by 10 percent a year and still be "maintaining effort." Under these circumstances, federal aid to the LEA may be supplanting local revenues that might have been raised to compensate for the effects of inflation. During a period of rapid inflation, maintenance of effort provisions, couched as they are in nominal dollar terms, cannot achieve the Congressional intent of ensuring that federal resources supplement and do not supplant local resources.

Another source of ineffectiveness has to do with the incentives MOE provisions present school district decisionmakers. Consider an LEA manager who is deciding whether or not to introduce a new and expensive educational program on an experimental basis. Uncertain whether this particular innovation will improve educational outcomes, the manager may be less likely to try it if he or she knows that once per pupil expenditures are increased to finance the new program, they can never be reduced again. In other words, MOE provisions, which are intended to ensure that educational spending increases as a result of federal efforts, may have exactly the opposite effect in the long run.

In addition, a variety of MOE provisions, each attached to a specific category of federal aid, can lock a district into a pattern of spending which no longer meets its needs. For example, a district whose student population is losing interest in vocational education and shifting to a more academic orientation may be penalized for decreasing vocational education expenditures and devoting the freed funds to the purchase of library books. Because a federal interest—the vocational education concern or the Title IV concern—is being advanced in either case, it is not clear that such behavior deserves sanction.

MOE provisions also involve three potential sources of inequity. First, expenditures do not measure tax effort.[2] A locality's tax effort is measured by expenditures relative to the

[2]We believe that Congressional intent involved "tax effort" rather than "expenditure effort." The legislative history of the slippage factor in the law indicates that this provision was intended in part as an allowance for possible changes in a district's tax base.

community's ability to pay. But a locality whose tax base declines or whose residents become poorer must continue to spend the same amount per pupil in order to qualify for federal aid. It must therefore *increase* its effort to be in compliance. Communities with growing tax bases or with residents who become wealthier may actually *decrease* their effort and still be in compliance.

The second source of inequity involves enforcement procedures. Responsibility for enforcing MOE—for granting or denying waivers—is currently centralized in the Department of Education (ED). A school district that has been unable to maintain a level of expenditures, through no fault of its own, must apply to ED for a waiver. Procedures for granting waivers take time, and it is possible that a district entitled to a waiver for, say, Title I, will receive funds so late in the school year that it cannot operate the program. Further, a district with real economic problems can only postpone loss of federal funds by receiving a waiver, since the waiver is for one time only and the LEA must return to pre-waiver spending levels after one year.

Finally, the sanction for noncompliance with MOE—usually total denial of federal assistance—really penalizes no one but the program's intended beneficiaries. Title I eligible pupils in a noncompliant district would suffer a withdrawal of federal aid at the same time as local educational resources are being reduced. It is a strange enforcement mechanism that further punishes the presumed victim of the proscribed behavior.

As Barro (1978) has pointed out, the failure of MOE provisions to allow for inflation has, until recently, been much more important than any of the other potential inefficiencies or inequities. In a period of inflation, when expenditures and tax bases are both increasing, nominal dollar MOE provisions will have no effect at all. This insight influenced the original plan of our study.

PLAN OF THE STUDY AND THE ORGANIZATION OF THIS REPORT

Between 1969 and 1979 the average annual rate of inflation was 7.4 percent (Economic Report of the President, 1980). Over the period from 1970 through 1978, enrollment in regular public elementary and secondary schools declined from 45.9 million to 42.6 million (NCES, 1980), a rate of slightly less than 1 percent per year. Until this year, school districts were permitted to reduce per pupil spending by 5 percent a year and still be in compliance with MOE provisions for Title I, Title IV, Vocational Education, and other programs. Therefore, school districts could reduce real expenditures (i.e., corrected for inflation) by more than 13 percent each year and still be in compliance. Over a ten year period, an annual 13 percent decrease (compounded) would reduce purchases of goods and services by a school district by close to two-thirds. Because a district purchasing one-third the inputs in 1979 as it did in 1970 would still be in compliance with MOE provisions, we initially suspected that no district anywhere should have any trouble complying with MOE. In other words, *our initial hypothesis was that MOE provisions were a dead letter.*

Research Procedures and Results

We tested this hypothesis by looking for districts that had either failed to comply with MOE provisions during the 1970s or were likely to be out of compliance in the near future. If we could

easily find such districts, then our initial hypothesis could be rejected. We began our search for such districts by interviewing officials at the U.S. Office of Education (USOE) responsible for monitoring MOE compliance for particular programs. We confined our investigation to four major programs: ESEA Title I (compensatory programs for educationally disadvantaged children), ESEA Title IV (instructional resources, guidance, counseling, and testing), Handicapped Education, and Vocational Education. Other programs with MOE provisions (e.g., ESAA and Indian Education) are similar to Title I in this regard, or are relatively small (Adult Education).

We asked the USOE officials to identify the states in which they had observed actual or potential compliance problems. We then visited the capitals of the ten states mentioned[3] most frequently by USOE officials: Alabama, California, Idaho, Illinois, Massachusetts, Montana, New York, Ohio, Texas, and Washington.

In each state we interviewed officials in the state Education Department whose duties included monitoring compliance with federal program requirements. Where it seemed appropriate we also interviewed the Chief Fiscal Officer and legislative staff members. Our objective was to determine (1) the number of districts that had been, were, or would be out of compliance with MOE provisions and (2) the circumstances that led to compliance failures. We also took the opportunity to solicit the views of state officials regarding possible changes in current MOE requirements. We asked for detailed information on the state's reporting procedures and for accounts of past or expected near-future failures to comply with MOE provisions. We obtained information about the state's economic conditions and legal constraints that might affect MOE compliance.

An analysis of the information we gathered during our state visits led us to conclude that our initial hypothesis was false. We found that a small but rapidly growing number of school districts are out of compliance with MOE requirements. We also concluded that the increased incidence of noncompliance is not a short-term phenomenon but the beginning of a long-term trend. The Education Department does not have sufficient discretion in its enforcement of MOE provisions to grant waivers to most of the noncompliant districts.

Therefore, unless there is some rapid legislative action, Title I funds will be denied at least 100 school districts during the 1980-81 school year. This is a dramatic increase over the number of districts denied funds for MOE violations in the past (only three over the previous four years). Some of these districts are especially needy. A larger number of districts are likely to find themselves in similar circumstances within the next year or so.

Contrary to our initial hypothesis, therefore, maintenance of effort provisions are not a dead letter. MOE requirements will now begin to influence federal education aid allocations, and, as a result, the design of these requirements is likely to become more important. In response to the potential inequities and inefficiencies induced by a strict enforcement of current MOE requirements, Congress may have to rethink and prioritize its educational and general intergovernmental policy objectives.

Organization of This Report

To analyze any set of policy instruments, one must begin with a good idea of what intentions and perceptions underlie the policy design. Chapter II describes current MOE regulations for four major federal education programs, tracing their evolution since they were enacted in 1965.

[3]A few of the states mentioned turned out not to have had any real problems. Other states had had experiences very similar to those we visited.

The evolutionary process has been one of continual tightening of requirements and centralization of enforcement authority.

Chapter III summarizes and organizes our findings in the states we visited. Most states expect many more instances of noncompliance in Title I in the future than they have experienced in the past. In California, as a result of Proposition 13, at least 85 school districts will probably be denied Title I funds for educationally disadvantaged children during 1980-81. Some of the financially strained northeastern states we visited were also experiencing their first problems with maintenance of effort. Many large cities in these states now find themselves on the brink of noncompliance. We found much less pessimism with respect to the other programs we investigated, although Title IV is causing some concern. Even though there is always a potential for noncompliance with MOE for vocational education and handicapped education, no state expected immediate violations because the programs are typically well-funded at the state level and still expanding.

Chapter IV presents an analysis of our findings. The design and enforcement of MOE provisions will influence the evolution of the federal system in important ways. Either strict or discretionary enforcement could involve the federal government as never before in second-guessing the budgetary decisions of state and local authorities. Abandoning strong MOE provisions for educational programs might harm educational interests during this period of fiscal containment. What education committees do to their MOE provisions will influence what other Congressional interests—highways, law enforcement, health, etc.—do to theirs.

In the course of our visits to the state capitals, we asked each official we interviewed to suggest desirable changes in MOE provisions. Their views are summarized in Appendix A of this report.

II. THE REQUIREMENTS AND THEIR EVOLUTION

In this chapter we look at the Congressional intent and Congressional perceptions behind the design of current MOE provisions and the specific role of these provisions in the context of the entire federal education program. We also look at the provisions themselves, what exactly they require and do not require, and how they have evolved since first enacted in 1965.

AN OVERVIEW OF FEDERAL CONTROL MECHANISMS

Federal aid to elementary and secondary education takes the form of categorical programs which target funds to specific groups of pupils or for specific instructional purposes. The intent of the legislation is to add to what local education agencies would have spent on the aided programs in the absence of federal assistance. To ensure that state and local agencies allocate these funds in a manner consistent with federal objectives and do not merely substitute federal monies for their own funds, various control mechanisms or "strings" are incorporated into the laws and regulations (Barro, 1978). Since the passage of the Elementary and Secondary Education Act (ESEA) in 1965, the number of different strings attached to individual federal education programs has increased. Maintenance of effort requirements, among others, have become progressively more stringent while enforcement authority has become increasingly more centralized. Penalties for noncompliance have also become more severe.

This accretion and revision of requirements drew little attention until recent fiscal trends began to generate concern over prospective incidents of noncompliance. The constraints imposed by maintenance of effort and similar requirements are, of course, nonbinding when the aided programs are growing (Barro, p. 24). But since the passage of California's Proposition 13, examinations of the requirements have raised questions about the intent of maintenance of effort provisions and their potential effects in an era of fiscal containment (Long and Likes, 1978; Comptroller General, 1978; Berke, 1979). A careful review of the evolution of the requirements suggests that the original intentions of Congress have changed since 1965, as has the federal approach to exercising control over state and local spending decisions.

Nearly all of the major federal education programs require recipients to maintain their level of non-federal spending from one year to the next in order to continue receiving federal funds.[1] These maintenance of effort requirements apply variously to expenditures for public education or for particular program purposes and may be directed at the state or local education agency or both. Maintenance of effort requirements are typically accompanied by some combination of additional provisions designed to ensure additivity of federal funds. These include the requirements that federal funds "supplement, not supplant" state and local funds; that federal funds be used only for "excess costs" of funded programs; that "comparability" of state and local spending be maintained among schools receiving federal funds; and that recipients provide "matching" funds for federally assisted programs. Each of these

[1]Specific statutory maintenance of effort provisions apply to programs funded by ESEA Titles I and IV, the Vocational Educational Act, the Indian Elementary and Secondary School Aid Act, the Adult Education Act, and the Emergency School Assistance Act. The "supplement-not-supplant" provision of the Education for the Handicapped Children Act has been interpreted as being equivalent to a maintenance of effort requirement.

requirements is associated with a large number of specific regulations defining exactly what behavior is required of recipient school districts.

The fundamental purpose of all of these "additivity" requirements is to ensure that federal efforts increase spending on certain programs. Congress intends neither to provide local tax relief nor to subsidize, indirectly, unaided programs. There is evidence throughout the legislative history of ESEA that the purpose of MOE requirements is to ensure additivity or nonsupplantation (*Congressional Record,* Senate, April 7, 1965, p. 7043). The history of the 1978 amendments included the following:

> The cornerstone of ESEA and similar Federal aid-to-education programs is the premise that Federal aid must supplement—not supplant—State and local expenditures. The historic intent is that Federal dollars must represent an additional effort for the target children; thus, State and local education program expenditures must be maintained at previous levels (U.S. Senate, *Report to Accompany S. 1753,* p. 121).

Maintenance of effort requirements were originally included in several programs as a test for nonsupplantation. In most cases, however, the two types of requirements—MOE and supplement-not-supplant—were eventually separated and augmented by other tests of additivity. Although they have similar objectives, they must be satisfied independently. The primary difference between the current maintenance of effort and nonsupplanting provisions is that maintenance of effort is measured by what the grantee *actually spent* from non-federal sources in a given year compared to what was spent during the previous year. Supplanting is measured by what the grantee *would have spent* from non-federal sources in the absence of federal assistance. Compliance with either one of these requirements does not guarantee that the other will be satisfied.

What, then, distinguishes the effects of MOE provisions from those of other additivity requirements in general and supplement-not-supplant requirements in particular? This question can be answered by imagining a set of circumstances in which a district would be *in* compliance with supplement-not-supplant and *out* of compliance with MOE. A district which had imposed a uniform, proportionate, across-the-board reduction of all programs serving all categories of pupils would satisfy supplement-not-supplant requirements, but would violate MOE provisions. In other words, supplement-not-supplant provisions protect the *relative* position of certain expenditure categories while MOE provisions protect the absolute level of expenditure on those categories. This distinction, of course, only becomes operational when, for any reason, state and local tax revenues are declining.

Effectively, then, the maintenance of effort provisions have assumed an additional objective to ensure that recipients of federal assistance do not decrease their overall education spending or their spending for federal program purposes. This means that regardless of whether federal funds are used to supplement non-federal resources, the base level of effort, as measured by the number of dollars spent, must remain constant or increase from year to year. When non-federal educational resources are shrinking for any reason, this requirement imposes a new kind of federal control on state and local spending decisions. It requires agencies to direct funds away from noneducational services, or from programs that are not federally assisted, in order to maintain dollar expenditures in the areas protected by maintenance of effort rules.

CURRENT MAINTENANCE OF EFFORT PROVISIONS

The maintenance of effort requirements for Titles I and IV of the Elementary and Secondary Education Act, the Vocational Education Act, and the Education for All Handicapped

Children Act are outlined in this section. The pertinent statutory and regulatory provisions are included in Appendix B. These requirements are comparable to those included in other major federal elementary and secondary education programs and can be expected to have similar effects. The current rules incorporate changes made by the Education Amendments of 1978 and the accompanying Congressional Committee reports.

The current provisions of the MOE requirements we examined are summarized in Table 1. Two distinctions among the types of provisions are important to note:

- The expenditures that must be maintained are usually for program purposes (ESEA Title IV, Vocational Education, and Handicapped Education), but some programs require that overall expenditures for "free public education" be maintained (ESEA Title I, Emergency School Aid, and Indian Education).
- Most programs require that the LEA maintain its spending from state and local sources; Vocational and Handicapped Education programs require, in addition, that statewide spending be maintained. In contrast, ESEA Title IV and Adult Education require only statewide maintenance of effort; that is, the aggregate spending of states and their participating local agencies must be maintained.

Two major changes in maintenance of effort provisions occurred when the 1978 Amendments were passed: (1) the validity of regulatory "slippage" provisions, which had allowed an annual spending decline of 5 percent for Title I and Vocational Education, was questioned by the Congressional Committee and changes were urged. Meanwhile, the statutory authority for other ESEA slippage provisions was removed; and (2) waiver grounds were narrowed, while penalty-free waivers were eliminated entirely (U.S. House of Representatives, *Report to Accompany H.R. 15*, pp. 139-140). ESEA provisions specifically excluded acts of voters or legislatures to limit taxes as grounds for a waiver. Both of these modifications had the effect of tightening maintenance of effort requirements for education programs generally, and for Title I in particular.

The "tightness" of the regulations and the centralization of waiver authority has not always characterized MOE provisions. Stricter interpretations of maintenance of effort, supplementary additivity requirements, and centralized enforcement provisions have been appended to the law almost every time the programs have come up for reauthorization.

HISTORY OF MAINTENANCE OF EFFORT REQUIREMENTS

1965-1975

The passage of the Elementary and Secondary Education Act in 1965 marked a new era in federal-state relations with respect to the funding of public schools. In the debate surrounding that legislative initiative, concerns were voiced that, on the one hand, the expected massive influx of federal aid would shift the locus of responsibility for school support from state and local governments to the federal government, and that, on the other hand, federal monies would be substituted for existing funds, thus failing to achieve the objective of improving education for the intended beneficiaries. The failure of earlier attempts by Democratic administrations to enact various forms of general school aid (for construction or salaries, for example) encouraged the Johnson Administration to design categorical programs that would, by their breadth, provide more or less general aid to what were widely acknowledged to be underfunded

Table 1

SUMMARY OF MOE PROVISIONS FOR SELECTED EDUCATION PROGRAMS

Program	What Must Be Maintained	Slippage	Waiver Grounds	Remarks
ESEA Title I[a] (Proposed Rules 45 F.R. 39712)	LEA current aggregate or per pupil expenditures (from state and local sources) for free public education. Expenditures are compared for the second and first years preceding the grant application.	2 percent annually[b]	Exceptional and unforeseen circumstances, e.g., a natural disaster, loss of tax base, strike, or loss of non-categorical federal funds. Expenditure reductions that are part of an overall state plan to reform school finance.	Waivers are for one year only and are accompanied by a penalty proportionate to the LEA's spending shortfall. The LEA must return to pre-waiver spending levels in order to receieve funds in the following year.
ESEA Title IV[c]	Statewide aggregate or per pupil non-federal expenditures for Part B and D program purposes. These expenditures are those made by the SEA, participating LEAs, and participating private schools. Expenditures are compared for the second and first years preceding the grant application.[d]	None	Exceptional and unforeseen circumstances, e.g., loss of tax base, diversion of revenues due to emergency circumstances, or failure to maintain spending which met an unexpectedly acute educational need in a prior year.	Waivers are for one year only and are accompanied by a penalty proportionate to the state spending shortfall. The state must return to pre-waiver spending levels in order to receive funds in the following year. If a waiver request is denied, the state may receive funds by excluding from participation the LEAs or private schools whose failure to maintain effort prevented statewide compliance.
The Vocational Education Act	Statewide *and* local aggregate or per pupil expenditures (from state and local sources) for program purposes. The statewide and local requirements are satisfied independently.[e] Expenditures are compared for the second and first years preceding the grant application.	None	Unusual circumstances, e.g., tax base decline or failure to maintain expenditures caused either by large outside contributions or large outlays for long-term capital purposes in a prior year.	States must demonstrate statewide MOE compliance to the Secretary of Education; local districts must demonstrate compliance to the SEA. All waivers, however, must be granted by the Secretary. Waivers are *not* accompanied by a penalty, and pre-waiver spending levels need not be resumed for continuation of funding.

Table 1—continued

Program	What Must Be Maintained	Slippage	Waiver Grounds	Remarks
The Education of the Handicapped Act[f]	Statewide *and* local aggregate or per capita expenditures (from state and local sources) for program purposes. The rule also extends to the use of federal funds for any particular cost within an LEA's special education budget. Current fiscal year *budgeted* funds are compared to funds *actually expended* in the most recent fiscal year for which data are available.	None	The state requirement may be waived by the Secretary of Education with a finding that all handicapped children in the state are being appropriately served. The local requirement may be waived by the SEA if spending decreases are due to declining enrollment of handicapped children or prior year outlays for long-term capital purposes.	

[a]The Title I rules are virtually identical to those for ESAA and IESSAA, except that the latter two programs include no provisions for slippage or for waivers of the requirements.

[b]The final rules, issued after this analysis was prepared, eliminated the 2 percent slippage allowance, as well as a provision which would have allowed the Secretary to find LEAs in "substantial compliance" if spending decreases did not lower service levels.

[c]The Adult Education Act, like Title IV, requires that statewide SEA and LEA non-federal expenditures for program purposes be maintained at 100 percent of prior year levels. Waiver grounds are virtually identical to those for Title IV (45 F.R. 22776, Sec. 166a.62-166a.65).

[d]Beginning in 1981, maintenance of effort is to be computed separately for Parts B and D.

[e]LEAs operating work-study programs must also maintain non-federal spending on work-study purposes from year to year.

[f]The nonsupplantation requirement of PL 94-142 has been interpreted by the former Office of Education as being equivalent to a maintenance of effort requirement (20 U.S.C. 1414(f) and 20 U.S.C. 1414(a)(2)(B); 45 C.F.R. 121a.230(b)).

schools (Meranto, 1967, pp. 33-38). Legislative consensus was achieved, in part, by the bill's focus on two widely decried educational problems and by its assurances that federal control would not accompany federal funds (P.L. 89-10, Sec. 604; Bailey and Mosher, 1968, pp. 58-60). ESEA addressed the educational problems of the financial status of rural and urban districts serving low income populations and the perceived nationwide underinvestment in textbooks and educational equipment. Maintenance of effort provisions, although they drew little attention at that time, were a convenient mechanism for providing a type of general aid with categorical overtones, and for quieting the concerns of those who saw either federal powermongers or state and local freeloaders lurking in the background.

The initial ESEA maintenance of effort requirements were designed to ensure that federal funds would not be subverted to general operational purposes or to tax relief by either states or localities. Title I funds could not be used by states to decrease their aid to eligible LEAs for "free public education" (45 CFR 116.44). LEAs had to demonstrate to states that their combined state and local "fiscal effort" for free public education had not decreased by more than 5 percent in per pupil expenditure terms since 1964, or that the reduction was caused by an unanticipated, unusual event (45 CFR 116.45). Title I payments to an LEA could not exceed 30 percent of the LEA's current operating budget.

The Title IV (then Title II) provision for "maintenance of level of support" was couched as a nonsupplanting requirement. The state plan was to

> . . . set forth the policies and procedures designed to ensure that federal funds . . . will be so used as to supplement and increase the level of State, local, and private school funds that would in the absence of such Federal funds be made available for school library resources, textbooks, and other printed and published instructional materials, and in no case supplant such . . . funds (45 CFR 117.24).

The nonsupplantation policies and procedures were to "take into consideration" the level of state, local, and private school funds budgeted for program purposes in the current year as compared to the most recent prior year for which actual expenditure data were available. No sanctions were specified, and since expenditure comparisons were merely to be considered when policies to ensure supplementarity were devised, the maintenance of effort provision as such had no real teeth.

One of the few other maintenance of effort requirements extant at that time applied to work-study programs operated by LEAs under the Vocational Education Act (45 CFR 104.25(e)).

Amendments to ESEA in 1967 did not substantially change the existing maintenance of effort requirements. A nonsupplanting requirement was added for Title I projects (45 CFR 116.17(h)) to ensure that intradistrict allocations of state and local funds would not penalize children in Title I project areas. The new Title VI, providing grants for the education of handicapped children, contained a "maintenance of level of support" provision couched in nonsupplantation language nearly identical to that of Title II (now Title IV).

The Vocational Education Amendments of 1968 added a maintenance of effort provision which required states (1) to provide assurances of nonsupplantation and (2) to withhold funds from LEAs that did not maintain their vocational education spending (45 CFR 102.58). A separate provision for statewide maintenance of effort was also included (45 CFR 102.151). A 5 percent leeway was allowed in calculating maintenance of effort, and an exception for unusual circumstances causing LEA spending reductions would be granted by the state. At the same time, states were instructed to give priority in fund allocations to LEAs that might have difficulty raising sufficient local resources by virtue of low property wealth or high uncontrolla-

ble costs (45 CFR 102.55, 102.56). While enforcing maintenance of effort and matching requirements, states were also to ensure that "no local educational agency which is making a reasonable tax effort . . . will be denied funds for establishing new vocational education programs solely because it is unable to pay the non-federal share of the cost of such programs" (45 CFR 102.57).

Although not entirely antithetical, these provisions illustrate the tension between two major federal program goals: the allocation of special program funds to fiscally needy localities and the stipulation that federal funds not be used to assume any part of the state or local educational burden. Additivity provisions are intended to penalize those who are *unwilling* to shoulder their share of the total burden but not those who are *unable* to raise sufficient resources at the local level.

Early discussions of the ESEA maintenance of effort and nonsupplantation provisions indicated some consensus on the justification for the requirements, but diverse concerns about their immediate and long-term effects.[2] Among the concerns that emerged between 1965 and 1968 was the prospect that the requirements might penalize forward-looking states or districts which invested heavily in education, while encouraging others to wait for federal funding before starting new programs. One widely accepted justification for the provisions was that education service levels were generally seen as inadequate and in need of substantial expansion and improvement. If this eventually ceased to be true, many observed, and if other public service needs were relatively ill-met by states and localities, maintenance of effort for education programs might require modification to avoid severe imbalances among services provided by state and local governments. Many commenters also urged flexibility in applying the requirements, recommending policies that would not penalize SEAs and LEAs for failing to maintain special, nonrecurrent expenditures, and urging penalties for noncompliant agencies short of total loss of federal funds (e.g., pro rata reductions). The desirability of imposing a maintenance of effort requirement on a program which already contained a matching or nonsupplantation requirement was also questioned. A need was felt for clear identification of the objectives each such provision would seek to secure in any given program.

During the late 1960s and early 1970s, maintenance of effort requirements seemed easily satisfied and relatively unobtrusive. States could effectively waive the requirement for LEAs with an "unusual event" finding, but education spending for all purposes was increasing so quickly that such exceptions were rarely necessary. Little activity took place on the federal level with respect to monitoring or enforcing the state maintenance of effort requirements, although the difficulties in enforcing nonsupplant provisions (particularly ones that relied on a determination of what *would have been* spent in the absence of federal funds) were becoming apparent.

Following the Education Amendments of 1974, rules were issued clarifying the nonsupplant requirements for Title I (45 CFR 116.40) and separating the nonsupplant and maintenance of effort provisions for Title IV. The earlier Title IV requirement that states consider annual state and local spending fluctuations in giving assurance of nonsupplantation was replaced by two separate requirements to be satisfied independently. Under the General Education Provisions Act (Sec. 434(b)(I)(A)(IV)), states were still required to set forth policies to prevent non-federal funds from being supplanted by federal funds. In addition, the 1974 Amendments required states to give satisfactory assurance that aggregate state and LEA

[2]The following account is derived mainly from memoranda and correspondence conducted by USOE's Grants Administration Advisory Committee between February and October of 1967. The Committee was one of several formed to provide advice to the Commissioner on rulemaking and future legislative changes for ESEA.

expenditures from non-federal sources for program purposes under Part B of the Act (library resources and instructional materials; guidance, counseling, and testing; and strengthening instruction in academic subjects) would not be decreased from the previous year's level (20 USC 1803(a)(11); 45 CFR 134.21). State education agencies displayed much concern about this new requirement when commenting on the proposed rules. In the final rules, clarifications were less than dispositive on the questions of what would constitute a "satisfactory assurance" that effort was maintained and whether waivers would be granted. Both questions would be determined on a case-by-case basis, USOE decided.

In 1975, the Education for All Handicapped Children Act (PL 94-142) amended and substantially changed the provisions of the old Title VI. Like the Title IV changes, the new requirements gave teeth to the concept of maintenance of effort by tying determinations of nonsupplantation to actual spending levels. The Act required both states and localities to give assurance that federal funds would be used "to supplement and increase the level of State and local funds *expended* for the education of handicapped children, and in no case to supplant such State and local funds" (20 USC 1413(a)(9)(B) and 20 USC 1414(a)(2)(B)(ii)) [emphasis added]. The use of the past tense in reference to expenditures led USOE to interpret the nonsupplanting provision as encompassing both maintenance of effort and supplement-not-supplant requirements.

1975-1980

By 1975, then, all the major federal education programs contained specific, enforceable maintenance of effort requirements; the sanction in each case was the total withholding of federal funds for that program. Nonsupplanting requirements were also applicable to each program and were subject to separate standards of compliance from maintenance of effort. Ironically, it was at about this same time that the effects of the economic recession of 1974 were beginning to be felt. Maintenance of effort provisions began to receive attention as concerns surfaced that federal program funds would be withheld from state and local governments whose tax sources were strained.

In June of 1975, Secretary of the Treasury Simon asked USOE to review the maintenance of effort provisions applicable to federal education programs and to assess the ability of the agency to modify such provisions to accommodate cases of economic hardship. Simon also urged DHEW officials to consider amending maintenance of effort regulations to reflect "current economic conditions," and the Treasury General Counsel issued a memorandum suggesting that flexibility to do so might exist.[3] However, Office of Education respondents saw the Agency's flexibility as being quite limited and recommended that any desired changes be effected through statutory revisions. OE claimed that all of the flexibility available to the agency was already reflected in the existing rules. For those programs where the statutes required that actual *expenditures* be maintained (e.g., ESEA IV and Adult Education), the regulations allowed no flexibility, since the General Education Provisions Act permitted no waiver authority unless expressly authorized by law (20 USC 1231(c)(a)(A)). Those programs covered by provisions for maintenance of "*fiscal effort*" (e.g., ESEA I and Vocational Education)

[3]A concurrent political move toward deemphasizing federal government controls may have contributed as much to Administrative efforts to loosen maintenance of effort requirements as the recession. The Republican Administration had promised the National Governors' Conference to attempt to reduce "federally imposed State government costs," among which maintenance of effort was becoming one of the more visible.

were allowed a 5 percent leeway and an unusual event exception by regulation, since fiscal effort might be considered to have been maintained even when actual spending decreased.

The concerns that emerged in 1975 led to important changes in the maintenance of effort provisions of the 1976 Education Amendments. Among the many revisions made were the following:

- Recipient agencies were allowed a choice between computing maintenance of effort on an aggregate or per pupil basis for programs under ESEA I, III, IV, Adult Education, ESAA, and Vocational Education.
- A 5 percent reduction in spending from a chosen base year over the authorization period was allowed for ESEA IV and Adult Education programs.
- Waivers were authorized for "exceptional" and "very exceptional" circumstances under the ESEA I, IV, and Adult Education Acts.[4] Waivers for "exceptional circumstances" were to be accompanied by a pro rata reduction in federal funds; "very exceptional circumstances" qualified an agency for a penalty-free waiver.

Even more significant than the provisions designed to grant some spending leeway and allow waiver options to recipient agencies was the stipulation in the Conference Report that "an agency shall notify the Commissioner when it intends to utilize the allowable reduction provision, or to request a waiver of maintenance of effort requirements. The managers intend that the Commissioner shall periodically inform [the Congress] and make available to the general public in an appropriate manner such notification *and his decisions*" (H.R. 94-1701, p. 233) [emphasis added]. This passage was interpreted by USOE as placing all authority to grant waivers or exceptions at the federal level. Thus, what might have been considered to be the easing of a federally imposed burden was accomplished at the cost of some increase in federal control.

Along with other, relatively minor, changes in maintenance of effort provisions,[5] the 1976 Amendments required that a study of the effect of the new provisions and waivers be conducted by the Comptroller General. The General Accounting Office produced a series of three progress reports and a staff paper (U.S. General Accounting Office, H.R. 7-36), but could make little comment on the rule-making process since final regulations were issued only for the Vocational Education Act and Title VI of the Higher Education Act. Regulations implementing the 1976 Amendments for ESEA Titles I and IV and Adult Education had yet to be issued when the 1978 Amendments were passed.

Several problems contributed to the delay in issuing regulations. The primary difficulty with respect to the design of the maintenance of effort rules centered around the appropriate limits for the Commissioner's greatly expanded role in deciding "equitable" waiver criteria. Questions had to be settled concerning what criteria would distinguish "exceptional" from "very exceptional" circumstances for purposes of waiver eligibility, and a decision had to be made about the spending level required of grantees in the year after a waiver was allowed. There were also concerns about how to interpret language describing "very exceptional circumstances" which appeared in the Conference Report accompanying the 1976 Amendments. The Report had defined such circumstances to include situations resulting in sudden, substantial

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[4]Waivers for "unusual circumstances" were still allowed by regulation for programs under the Indian Education and Vocational Education Acts.

[5]Other changes included a change in comparison years (to the first and second preceding fiscal years) for computing maintenance of effort under ESEA IV and the Adult Education Act; the inclusion of participating private schools in computing maintenance of effort for Part C of ESEA IV; and the inclusion of postsecondary institutions in the Vocational Education Act maintenance of effort requirement.

tax base decline; repeated voter defeats or school operating levies;[6] and situations where the capacity to raise funds was out of SEA or LEA control due to a very substantial need to reduce or divert fiscal resources. This last example troubled HEW officials who feared that such an allowance would subvert the entire maintenance of effort requirement for education programs.

Although regulations implementing the 1976 law were never issued, in practice the Commissioner decided eligibility for waivers for exceptional or very exceptional circumstances on a case-by-case basis. All of the waiver requests granted between 1976 and 1978 were allowed on the basis of very exceptional circumstances. Two requests were denied entirely, although the situations in these two LEAs were not clearly distinguishable from those in some of the LEAs which had successfully applied for waivers. The exceptional circumstances waiver, which would have occasioned a pro rata reduction in federal funds, was never used. The only waiver request based on a "substantial need to reduce or divert fiscal resources" was granted to Guam, where a widespread economic recession forced the territory out of MOE compliance under ESEA Titles I and IV.

The remaining questions were ultimately settled by the Education Amendments of 1978, the deliberations for which were greatly influenced by the GAO reports and recommendations. Besides criticizing OE for the delay in issuing regulations, the reports pointed out that neither HEW nor the Office of Education included maintenance of effort in their auditing efforts, and that sanctions were not being applied to noncompliant agencies. In fact, of the two LEAs denied waivers under Title I, one had already received its allocation before the waiver request was acted upon (and had not been asked to return the funds), and the other received the funds that had been withheld along with its regular allocation in the year after the waiver request was denied. The apparent lack of consistent, equitable criteria for deciding waiver requests was also criticized.

Two other GAO observations influenced the design of the 1978 provisions. Although the changes made in 1976 were meant to be responsive to the then tenuous economic conditions in many states, the reasons for those efforts to lessen the burden of maintenance of effort seemed forgotten two years later. Runaway inflation was now the more salient issue, and the GAO reports pointed out that (1) the maintenance of effort requirements did not take account of inflation since they were couched in nominal dollar terms, and therefore they effectively allowed expenditure slippage even without explicit provisions for spending leeway; and (2) the 5 percent slippage allowance, which had always been included in the maintenance of effort rules for Title I and Vocational Education, was not specifically authorized by statute and thus might be illegal.

The legislative history traced in this chapter clearly indicates that the "5 percent rule" was long considered justified because the statutes to which it applied required maintenance of "fiscal effort" rather than of actual spending levels. Further, the deliberations of Congress in 1976 seemed directed at extending to other programs the kind of spending leeway already existing for Title I and Vocational Education.

Nonetheless, the end result of the 1978 debates was an overall tightening of maintenance of effort requirements and a Congressional charge to HEW to more actively "secure their enforcement" (H.R. 95-1137, p. 139). The Amendments and subsequent regulations eliminated slippage provisions for all education programs except Title I, for which the proposed rules allow

[6]The Conference Report cited "situations that occur in States where State law requires that each school district must go to the voters for special levies to meet operating expenses over and above those guaranteed by the State; and further, State law prohibits a school district from trying more than twice in any one year to obtain voter approval of a school maintenance and operation levy" (H.R. 94-1701, p. 233). This example was meant to be specifically responsive to conditions in Washington state.

a 2 percent reduction in spending; eliminated the penalty-free waiver for "very exceptional circumstances"; authorized a waiver accompanied by federal fund reductions for "exceptional and unforeseen circumstances" with sharply restricted grounds for eligibility; and required a return to pre-waiver spending levels for continued eligibility of agencies granted a waiver.

CONCLUSIONS: LEGISLATIVE INTENT AND LEGISLATIVE PERCEPTIONS

The specific role of maintenance of effort provisions, the structure of the provisions themselves, and the evolution of the provisions since 1965 all suggest that two distinct intentions have informed the design of MOE. One fundamental intent of federal policy is to increase spending on certain categories of educational services. Congress correctly perceives that its intentions and those of LEAs and SEAs may not coincide, and so, without some provision to ensure nonsupplantation, the only effect of federal aid might be to decrease state or local tax effort or to increase spending on general programs for uncategorized students. Hence, the maintenance of effort and other additivity requirements have been devised. At the same time, Congress implicitly recognizes that its nonsupplantation instruments are imprecise and that a decrease in spending does not *necessarily* imply an intention to substitute federal for local revenue. Some spending decreases are the result of unforeseeable or uncontrollable forces. Hence, the system of larger or smaller loopholes in the laws and regulations has also evolved.

The history of MOE requirements clearly indicates that Congress's concern with ensuring nonsupplantation has almost continually assumed a greater and greater relative importance vis-à-vis the intent to avoid the potential inequitable consequences of strict enforcement. Furthermore, Congress's perception of the potential incompatibility of federal and state intentions with respect to the use of federal funds has assumed a larger and larger significance.

These tendencies have resulted in a set of strict requirements, narrowly defined loopholes, and centralized authority to grant waivers.

This analysis leads to the question the next chapter attempts to answer: Have the tightening and centralization processes left sufficient flexibility to avoid the potentially inequitable or counterproductive consequences of strict enforcement?

III. THE INCIDENCE AND ETIOLOGY OF NONCOMPLIANCE

In our effort to gauge the incidence of noncompliance with MOE provisions and to understand the nature of current and near-future violations, we interviewed officials in ten states which were likely sites for compliance failures (or which had been the source of compliance questions or violations in the past). We focused on trouble spots because MOE violations have been so rare in the past that our initial concern was to discover whether *any* indicators of potential difficulty—fiscal limitations, regional economic downturns, or political reluctance to support education programs—would actually lead to noncompliance. If we found no evidence of noncompliance in these states, we reasoned, maintenance of effort requirements could still be considered a low priority area for policy concern or redesign. Since these states were selected because they typified certain conditions that might constrain state and local education spending, our conclusions may be generalized only to states experiencing quite similar conditions. Our findings, if multiplied across all the states, would represent the worst-case scenario of potential noncompliance. On the other hand, we found such consensus among state officials on the current and future effects of different MOE provisions that it seems equally likely that unique state circumstances are less powerful predictors of MOE violations than are current national trends and the regulations themselves.

In general, we found a marked increase in the incidence of ESEA Title I MOE violations in the states we visited; a widespread sense of impending compliance difficulties with the Title IV requirements; and a set of shared concerns about the design of the Vocational and Handicapped Education requirements, though supported by little evidence of immediate compliance problems. The Title I and Title IV concerns are motivated by the recent regulatory changes and by the distinct nature of those two MOE provisions—Title I requires maintenance of all public education spending; Title IV requires statewide MOE without providing state-level enforcement tools. Fiscal limitations and local economic distress seemed to play the largest roles in inducing compliance failures.

ESEA TITLE I

MOE Compliance Before 1980

Few Title I maintenance of effort problems surfaced before 1976. Since states had the authority to grant exceptions when an LEA's failure to maintain effort was due to "unusual circumstances," the only federal involvement in enforcing the requirement took place when compliance reviews indicated irregularities. Further, maintenance of effort was not a high priority in federal audits or program reviews, so little information was gathered during these years. An examination of HEW compliance reviews for Title I from 1965 to 1976 found only seven instances of MOE problems out of 162 problems identified in reviews of "funds restrictions" requirements in 20 states (SRI International, 1979). All but one of these cases involved procedural or computational problems; in one state, noncompliant LEAs had not satisfied the unusual circumstances standard, but were not denied funds. On rare occasions, states did

withhold funds from noncompliant LEAs if the failure to maintain effort seemed to be the result of unwillingness rather than inability to raise the necessary revenues. Generally speaking, though, the unusual circumstances rule was liberally interpreted in the relatively few instances when an LEA reduced its spending for free public education.

In 1975-1976, some more serious problems with maintenance of effort began to crop up. A number of school districts in the state of Washington, among them Seattle, were unable to obtain voter approval for school operating levies. These levies, which required annual approval, often accounted for as much as 40 percent of a district's current expense budget. State law precluded a local school board from placing a levy before the voters more than twice in any given school year. Economic problems in the state contributed to these difficulties. Seattle, home of the Boeing Corporation, was especially hard-hit by the discontinuance of the SST and other changes in the aircraft market leading to reduced employment, decreases in school enrollment, and a general decline in the metropolitan economy. The State Education Agency was prepared to grant unusual circumstances exceptions to LEAs that had suffered double levy defeats until USOE voiced disapproval. It was at this point that the 1976 Education Amendments created a special waiver for the "very exceptional circumstances" created by the two-time failure of an LEA to gain voter approval for its school levy. Over the next three years, twenty Washington school districts requested such waivers; all but two of the requests were approved.

In Chapter II, we discussed the events that led to the MOE revisions in 1976. Fears that the recessionary economy would make large numbers of districts unable to comply with maintenance of effort requirements proved largely unfounded over the next few years. Between October 1976 and November 1979, USOE received a total of 28 waiver requests from LEAs in six states and one territory (see Table 2). Most of these requests were approved; only three were denied. Several factors contributed to the relatively small number of waiver requests: both the 5 percent slippage allowance then in effect and the option of calculating expenditures on an aggregate or per pupil basis allowed many fiscally squeezed districts to remain in compliance. Evidence gathered in our site visits to ten states also suggests that estimated, rather than actual, expenditures have been used in the past in some states to compute MOE; in others, innovative calculations have kept the spending figures of borderline districts within the allowable leeway.

In 1978, the 5 percent slippage allowance was changed to a 2 percent allowance,[1] waiver grounds were narrowed, and the use of actual expenditure data (for the first and second years preceding the grant application) was required. June of 1978 also marked the passage of California's Proposition 13, which was interpreted by many as the beginning of a nationwide taxpayers' revolt. Eight other states enacted state or local fiscal limitations in November of that year, although only one—Idaho—followed the property tax cutback approach of Proposition 13. These laws, many of them constitutional amendments, quickly riveted attention on the intergovernmental dimensions of state and local public finance. Questions of the proper federal role in designing and enforcing fiscal control mechanisms were propelled to the forefront of debates around whether federal aid should be withheld if maintenance of effort or similar requirements were not met.

Initial attempts to predict the impact of fiscal limitation measures on state and local spending and the attendant consequences for federal categorical aid programs were inconclusive (Comptroller General, 1978; Long and Likes, 1978; Ladd, 1978; Ellickson, 1979). A variety

[1]Although final regulations to this effect have not yet been issued, USOE issued Interim Guidelines to the states shortly after the 1978 Amendments were passed. The Guidelines explained how the 2 percent rule would be implemented. The proposed final rules also include the 2 percent allowance (see Appendix B).

Table 2

MAINTENANCE OF EFFORT WAIVER REQUESTS, FY 1977-FY 1980

State	No. of LEAs Requesting Waivers	No. of Requests Approved	Reasons for Waiver Requests
Alabama	1	1	Hurricane
Missouri	2	1	Tornado (approved)
			Tax levy defeat and enrollment increase (denied)
Montana	1	1	State aid reduction due to declining enrollments
Texas	2	2	State aid reductions due to personnel changes; enrollment decline
Vermont	1	1	State aid reduction and district reorganization
Washington	20	18	Double levy failure
Guam	1	1	Economic recession
Total	28	25	

of scenarios could be imagined depending on state decisions concerning uses of surplus revenues and new tax sources, regional and national economic conditions, and federal response. Given the necessary time lapse for the outcomes to materialize and the lag in reporting spending data for federal program purposes, it is not surprising that the earliest manifestations of the effects of fiscal containment measures on maintenance of effort compliance would appear in 1980.

The Current Outlook

In nearly all of the ten states we studied, some Title I maintenance of effort problems were expected to appear this year or next. At the time we conducted our state visits (Spring of 1980), five SEAs had completed their initial calculations for FY 1980 MOE compliance. In these states, a total of 111 LEAs were found to be below the effort standard (using the 2 percent slippage allowance); 96 of these LEAs receive Title I funds. This sample alone represents a tenfold increase over the annual number of LEAs requesting waivers between 1977 and 1980. More than 85 percent of the noncompliant Title I districts are in California; isolated instances of noncompliance had appeared in Massachusetts, Montana, New York, and Texas.

Generally, the districts in which MOE problems have appeared are small. This is not surprising for two reasons. First, the budgets of small districts show greater proportionate fluctuations to small changes in enrollment, staffing, or school revenue sources. Second, the conditions which might trigger MOE problems in small districts are not likely to be noticed or responded to as quickly as those in large districts which have more sophisticated accounting systems and greater visibility at the state level.

It is important to note that maintenance of effort for Title I has not been a very salient issue at either the state or local level in the past. Instances of noncompliance have been so rare that

the cases which arose this year came as a surprise to many of the SEA officials we interviewed. Second, the Title I requirement, because it applies to total educational expenditures rather than specific program spending, does not encourage its use as a lobbyist's tool as is the case with the Title IV, Vocational Education, and Handicapped requirements. Thus, neither state and local officials nor program advocates have had much incentive to monitor Title I MOE very closely.

The major causes of actual and expected spending reductions are fiscal limitations measures, some of which have been in existence for years, even decades, prior to Proposition 13; tax levy failures; local and regional economic decline, particularly in the Northeast and Midwest; and declining enrollments, which often cause sporadic decreases in school budgets rather than the gradual retrenchment which could allow LEAs to satisfy MOE using per pupil expenditure computations.

Three circumstances are often exacerbated by the increasing reliance of local school districts on state (and federal) aid, and by the interactions between intergovernmental aid policies and local conditions. Nationwide, local governments now provide less than half of the operating revenues for public schools, and their share is still declining. Meanwhile, many state education budgets are growing slowly or not at all. State aid allocations to individual LEAs can be significantly affected by shifts in local wealth, enrollments, or tax rates,[2] making annual expenditure levels more volatile than in the past. The prospect of cutbacks in Federal Impact Aid and Revenue Sharing Funds is likewise threatening to LEAs that rely heavily on these sources of income.[3]

Of the ten states we visited, three had recently passed local tax or spending limits (California, Idaho, and Massachusetts). Another two have had long-standing limits on local tax rates (Alabama and New York).[4] Five states require voter approval of either school district budgets or school tax levies (Illinois, Montana, New York, Ohio, and Washington). Several of the states, particularly those in the Northeast and North Central regions, are suffering economic downturns and loss of industry from their urban centers. These same regions are hardest hit by declining enrollments. All of these conditions conspire to pose maintenance of effort difficulties for certain local education agencies. Table 3 summarizes the findings of our ten-state survey. The following discussion details the conditions affecting MOE that we found in the states.

Fiscal Limitations. The post-Proposition 13 situation in California and its effects on Title I maintenance of effort are worthy of special attention both because of the size of the state and its reputation as a trend setter. Since the passage of Proposition 13, California's General Fund Reserve has been reduced by about $1 billion each year. By the end of fiscal year 1982, there

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[2]State aid to schools is usually generated by a formula which takes account of several factors: district wealth, enrollments, and often, tax rate for education. A decrease in district property wealth will result in increased state aid; however, there is often a lag of one to two years between loss of tax base and adjustment of formula aid due to data collection and computation processes. Thus a district that experiences a loss of tax base may not be compensated for its lost revenues immediately and, depending on state aid ceilings, may never recoup those losses entirely. On the other hand, a decrease in enrollments will decrease state aid entitlements. Although many states have made adjustments to their aid formulas to avoid large sudden drops in state aid, these often postpone, rather than eliminate the effects. In states that fund school personnel units on the basis of enrollments (e.g., one teacher unit for every 25 students), an LEA may in a single year lose state funding in an amount disproportionate to its enrollment decline. Finally, in states that use a formula driven by local tax effort (such as the district power equalizing or guaranteed yield plans), the defeat of local tax levies not only constrains local revenues but reduces state aid revenues as well.

[3]Impact Aid allocations to LEAs amounted to $805 million in FY 1980. Approximately $1.5 billion of General Revenue Sharing Funds were allocated to education in 1976-1977, and even more in subsequent years. Twelve states allocate all of their state revenue sharing money for public elementary and secondary schools.

[4]New York's 62 cities are subject to a constitutional property tax rate limit. All school districts in Alabama are subject to such a limit.

Table 3

SUMMARY OF TITLE I MOE COMPLIANCE PROBLEMS IN TEN STATES

State	No. of LEAs Out of Compliance[a]	Other Potential Violations	Reasons for Current and Potential Compliance Problems
Alabama	Data not available at time of site visit	Dependent on state appropriations	Heavy local reliance on state aid coupled with constitutional limit on local tax rates; state spending cuts expected.
California	86	More in FY 1982	Local tax and spending limitations; heavy local reliance on state aid; dwindling state surplus.
Idaho	Data not available at time of site visit	Dependent on state appropriations	Local tax limits; state spending cuts expected.
Illinois	Data not available at time of site visit	Dependent on local economic conditions	Declining enrollments; bond failures; outmigration of industry.
Massachusetts	4	Dependent on effects of Proposition 2½	Local spending limits; declining enrollments.
Montana	3	Small districts	Levy failures; small district problems.
New York	2	Urban districts	Constitutional tax limits for cities; voter budget disapprovals.
Ohio	Data not available at time of site visit	Urban districts	Levy failures; mandated property tax rollbacks; loss of industry.
Texas	3	Small districts	Small district problems.
Washington	Data not available at time of site visit	High wealth districts	School finance reform; local add-on levy failures.

[a]Title I recipients not meeting the 98 percent MOE standard for FY 1980 funding.

is expected to be a $1 billion deficit which will necessitate state spending cuts since the California Constitution prohibits deficit spending by state government.

Following Proposition 13's enactment in 1978, the loss of $2.8 billion in property tax revenues was offset by a $2 billion increase in state aid. Current expenditures for schools from state and local sources rose by less than 2 percent from fiscal year 1978 to 1979. The state assumed more than 70 percent of local school cost. State categorical aid was slashed by 10 percent across the board for all programs except those serving handicapped students. Major real cutbacks took place in spending categories such as books, supplies, equipment replacement, capital outlay, preschool and adult education, administrative support services, community services, and food services.

The distribution of funds to local school districts was affected by two main factors: the projected FY 1979 budget of the LEA and the "*Serrano squeeze*"[5] which allowed greater proportionate reimbursement to low-spending districts than to high-spending districts. LEAs

[5]The school finance decision in *Serrano v. Priest* required equalization of wealth-related disparities in school spending. The "*Serrano squeeze*" refers to a factor in the school finance formula which is intended to constrain spending in the high-spending districts while boosting expenditures in formerly low-spending districts.

were guaranteed from 85 to 91 percent of their FY 1979 budgets based on this squeeze factor. In the future, local spending will also be constrained by the Gann initiative, which determines allowable local government outlays on the basis of population or school membership. Preliminary estimates show that nearly half of California's school districts will be held to lower expenditure levels under Gann than their *Serrano* revenue limits would otherwise allow.[6]

Maintenance of effort compliance for FY 1980 is determined by spending changes from FY 1978 to 1979. Between these two years, 286 of California's approximately 1000 school districts reduced their aggregate current expenditures by more than the 2 percent allowed by Title I MOE rules. Using the optional per pupil calculation, 96 of them had also decreased per pupil spending by more than 2 percent. Eighty-six are Title I recipient districts; almost half of these (39) would have satisfied the MOE requirement under the old rules which allowed a 5 percent spending leeway.

We expected that the noncompliant LEAs would be the high-wealth, high-spending districts which had relied more heavily on the property tax before Proposition 13 and which would also have been caught in the *Serrano* squeeze. In fact, this type of district accounted for only about one-quarter of the number that fell out of compliance (see Table 4). Most of the noncompliant districts are in the average range with respect to property wealth and spending levels; a substantial number (nearly 20 percent) are low-wealth and low-spending districts, many with predominantly minority populations. Most of the poorer LEAs are heavily reliant upon federal funds as well, depending on federal assistance for over 10 percent (sometimes as much as 20 percent) of their local budgets.

Noncompliance with Title I MOE rules may indicate other MOE problems as well. It is likely that LEAs with high proportions of federal funds and large Native American populations are recipients of Indian Education funds, which are accompanied by a maintenance of effort requirement almost identical to that of Title I. Thus, these districts may be in danger of losing both sets of funds as a result of inability to maintain effort. Any of the districts which receive ESAA funds for desegregation assistance are also likely to be out of compliance with that program's maintenance of effort requirement since it, too, closely resembles the Title I provision. It is possible that LEAs with large Hispanic populations receiving bilingual education assistance under ESEA Title VII will have some difficulty with that program's nonsupplanting requirement. If, however, bilingual program cuts are not disproportionate to overall cuts, the presumption of supplanting could be counteracted.

To the extent that noncompliance in these districts was caused solely by Proposition 13, they will be unable to qualify for maintenance of effort waivers. In districts where other conditions contributed to spending reductions, eligibility for a waiver might be established, but we can expect protracted negotiations in these cases, given the presumption of ineligibility.

The maintenance of effort picture in California is unlikely to change much in the near future. With the steady dwindling of the state surplus and the additional constraints of the Gann initiative, more districts can be expected to reduce spending. If state taxes are not increased before FY 1982, the conditions will worsen, since state aid to schools will have to be decreased to maintain a balanced state budget.

Other states with tax or spending limitations have not yet experienced such drastic effects at the local level, although their situations are in some cases precarious.

Idaho passed a near-copy of Proposition 13, called the One Percent Initiative, in 1978. The effects of that initiative were initially offset by upward reassessment of property and by general

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[6]California Assembly Committee on Education, *Seminar on Proposition 4: Impact on School Districts,* November 9, 1979 (mimeograph).

Table 4

Selected Characteristics of California School Districts Unable to Comply With Title I Maintenance of Effort Requirements for 1980-81[a]

	No. of Districts
District Enrollment in ADA	
1-99	10
100-249	22
250-499	20
500-999	11
1000-2499	9
2500+	15
Assessed Valuation per ADA	
Below 50th percentile	16
50th-90th percentile	48
Above 90th percentile	22
Current Expense per ADA	
$1200-1499	11
$1500-1799	26
$1800-2099	26
$2100-2399	8
$2400+	15
Adjusted Current Expense per ADA[b]	
$1200-1499	17
$1500-1799	27
$1800-2099	19
$2100-2399	10
$2400+	13
Percentage of Minority Students	
0-19	51
20-39	21
40-59	6
60-79	2
80-99	6
Federal Funds as Percent of Current Expense Budget	
0-4.9	43
5-9.9	22
10-14.9	15
15-19.9	4
20+	2

SOURCE: *California Public Schools: Selected Statistics, 1977-78*, State Department of Education, Sacramento, 1979.

[a]Data are for the 1977-78 school year.

[b]Adjusted current expense excludes adult education expenditures and federal expenditures as required for Title I maintenance of effort computations.

economic growth which increased income tax revenues. In FY 1980, school district spending was frozen at the prior year's levels, and several alternative plans—some of which would entail spending reductions—are being considered for FY 1981. SEA officials could not accurately forecast the effects of the Initiative on Title I maintenance of effort, although they voiced expectations of small-district problems.

In Massachusetts, the legislature passed a 4 percent cap on local government spending increases in 1979. The state provides only a small share of local school revenues (33 percent of FY 1980), and the proposed FY 1981 state budget for education shows no dollar increase. If an expected revenue shortfall materializes, state aid may actually decrease. Rapidly rising energy costs and attempts to direct funds toward energy-saving capital improvements have also cut into local instructional budgets. Although aggregate current expenditures dropped in 28 (6.4 percent) of Massachusetts' LEAs in FY 1979, only a handful failed to meet the per pupil spending standard with the 2 percent slippage allowance. Four of the seven LEAs identified as below the standard at the time of our visit are Title I recipient districts.

In November 1980, Massachusetts voters passed Proposition 2½, a referendum that requires a gradual (15 percent annually) rollback of local property taxes to 2½ percent of full market value and, according to most interpretations of the law, will strip school committees of their fiscal autonomy. (City councils will have final control over school budgets instead.) Statewide, schools will lose $446 million next year; the impact is expected to be greatest in cities like Boston, Worcester, Springfield, and New Bedford, which will have to reduce property taxes by 50 percent or more over the next several years. School officials are predicting widespread school closings, layoffs, and program cutbacks in the two-thirds of the state's school districts that must reduce taxes. Massive infusions of state aid seem unlikely to offset the effects of the Proposition. Maintenance of effort violations are certain to occur over the next few years unless dramatic state initiatives materialize.

In New York, two different types of constraints on LEA spending exist. All of the state's 62 cities are subject to a constitutional tax limit; this limit on revenues is expressed as a percentage of the full valuation property tax base. Once this level is reached, no further taxes may be levied. All other school districts must have their budgets approved by the district voters each year. If a budget is not approved, the school board must adopt a contingency budget which includes only those expenses needed to provide the minimum services legally required for school operations. Some categories of spending are specifically excluded from contingency budgets. By FY 1980, at least 12 city school districts had reached their constitutional tax limits, and one-third of the state's LEAs were operating on contingency budgets. The state legislature has made emergency loan appropriations for cities in each of the past two years, but fiscally dependent city school boards—Buffalo, Syracuse, Rochester, Yonkers, and New York City—have had an increasingly difficult time getting budget approvals from their city councils. So far, the only instances of MOE noncompliance which have appeared for FY 1980 are in very small districts. The future fiscal condition of New York's city school districts will depend largely on state aid allocations and, perhaps, on the outcome of the school finance case which is being reviewed by the State Supreme Court.

Ohio is a state that has been uniquely innovative in its approach to limiting government spending. A combination of millage rollback and tax reduction provisions prevents LEA property tax revenues from increasing with inflation in the tax base. Voted millage is "rolled back" when periodic assessments show revenue increase not caused by property tax base growth or improvement, and the "lost" millage can be recouped only by voter approval of new tax levies. Since state education aid is based partly on tax effort, rollbacks constrain both local and state revenues for schools. As local revenues are constrained, effective millage rates slip, thereby

reducing the amount of state equalization aid for which an LEA is eligible. Although the overall level of state funding has increased steadily over the past few years, the drastic reductions in local revenues sometimes caused by rollbacks are difficult to offset.

Levy defeats have led to a rash of school district closings over the past few years, since LEAs may not incur a deficit. A new enactment designed to prevent further school closings requires LEAs in this situation to accept state emergency loans accompanied by specified service cutbacks or to go into state receivership, with the same likely result. Any district affected by this law which has previously operated a program above the state's minimum standards level will likely suffer both program and expenditure cuts leading to MOE failure. Add to this the effect of drastic industry losses in cities like Youngstown and Dayton, and the complicated fiscal problems in Cleveland, and the prospect of major maintenance of effort problems is ominous. Cleveland balanced its FY 1980 budget during a ten-week teachers' strike, reducing spending so severely that it is expected to be well below MOE standards when FY 1981 data are computed. Although actual maintenance of effort data were not available at the time of our state visit, the Title I director expected that the manifestations of these problems would show up in the FY 1980 and 1981 computations.

Alabama, like most Southern states, provides a large proportion (nearly 70 percent) of education funding at the state level. Local districts may supplement the foundation amount, but are subject to a constitutional limit on local property tax rates. Many LEAs have already reached their millage limits, so when a state revenue decline led to projected education cuts this year, substantial concern was generated among SEA and LEA officials. Legislative negotiations were not complete at the time of this writing, but the prospect of state aid cuts brought into relief the potential difficulties for MOE compliance of requirement targeted at LEAs in a state where education revenues, because of local tax limits and the state funding system, are almost entirely out of LEA control.

Levy Failures. School levy failures have increased dramatically over the past decade as part of the pattern of voter discontent with public spending and the local property tax (NCES, 1979, p. 153). Levy failures pose the greatest threat to MOE compliance in places where annual voter approval is required for school operating expenses, rather than for special "add-on" purchases or new services. Single-year "add-on" levies can also prove troublesome if the higher taxing level established in one year is not maintained in subsequent years. The current MOE regulations make it doubtful that LEAs unable to pass levies will qualify for waivers, since spending drops caused by "referenda" or "acts of local voters" are specifically excluded from ESEA waiver grounds.

Many Northwestern and North Central states require annual voter approval for tax and/or spending decisions. The results of this approach to school funding in states like New York and Ohio are described above. Levy defeats are also prevalent in Illinois, and are a source of concern to SEA officials there as well. Emergency state aid allocations are sometimes used as an ad hoc solution to fiscal crisis posed by levy defeats. A more permanent approach—the design of a full-state funding formula—has greatly alleviated MOE violations in Washington state, the site of most compliance failures in earlier years.

As a result of legislative reforms, Washington now operates a school finance system which comes close to full state funding. An upsurge in the regional economy has allowed state funds to increase rapidly, replacing almost entirely local reliance on funds that were once generated by annual operating levies. Under current law, LEA residents may choose to levy a local property tax to add no more than 10 percent to the allocation they receive from the state. The rosy economic picture in the state has facilitated these developments by allowing a speedy phase-in of the new formula, and by diluting voter resistance to requested add-on levies.

Maintenance of effort problems may occur if voters have approved a 10 percent supplement in the past but fail to renew the add-on in an annual election. However, only occasional instances of this situation are expected. High-wealth, high-spending districts that may be forced to reduce their spending as part of the new equalization plan should qualify for waivers under the current Title I guidelines.

The situation that once caused so many compliance failures in Washington still exists in other states that rely on annual add-on levies.

In Montana, state foundation aid provides 50 to 60 percent of the average school district's revenues. A levy to raise an additional 25 percent of that amount can be authorized by the local school board; then two optional local add-ons may be placed before the voters three times in a given year. This year, three LEAs will request MOE waivers due to triple levy failures. These requests would almost certainly have been granted under the old Title I rules, but the new language precluding waivers for noncompliance caused by voter "referenda" makes their eligibility more doubtful. The local add-on condition, and the fact that most of Montana's 30 LEAs are very small, may pose additional maintenance of effort problems in the future.

Small School Districts and Declining Enrollments. Small school districts are overrepresented among MOE violators because any single change in personnel or services has a greater proportional effect on their budgets than would be the case in a larger district. For example, the replacement of an experienced teacher by a new, less experienced and expensive teacher can decrease district aggregate and per pupil spending substantially, even though services remain constant. Similarly, the departure of a handicapped pupil who had required an expensive service placement can cause a spending drop greatly disproportionate to the attendant enrollment change. Very small districts also lack the sophisticated administrative mechanisms that would allow for prompt recognition and redress of potential MOE problems. Quite often, SEA officials reported, local personnel in these LEAs lack the expertise or the accounting tools to accurately measure and report MOE-related expenditures. The problems of small school districts are exacerbated in states like Texas and Montana which allocate state funds on the basis of teacher units. A small drop in enrollment may disqualify the funding of a full teacher unit, reducing state aid significantly in a district that employs only a few teachers to start with.

Nearly all the state officials we surveyed mentioned the "small district syndrome" as troublesome in their annual MOE verifications. Quite often, apparent violations are the result of misreporting and can be corrected fairly easily. However, when justified instances of noncompliance have led to waiver requests, the lengthy waiver process has often delayed or prevented the operation of Title I programs, both in the LEAs requesting waivers and in other districts involved in cooperative programs with them. In order to address this kind of problem more efficiently, the proposed Title I rules included authority for the Secretary to find an LEA in "substantial compliance" where an expenditure drop has not caused a decrease in service levels.[7]

Texas has had recurring problems with MOE in its small rural districts, many of which are experiencing declining enrollments and tax bases. Although consolidation of districts has been tried, the sparsely settled areas of the state still suffer from loss of students and, hence, of state-funded teacher units as well as from teacher recruitment difficulties. At least three districts in these circumstances will be requesting waivers for FY 1980. One LEA which could

[7]The final Title I rules, however, dropped the "substantial compliance" provision. It appears that all districts not in compliance with MOE will have to go through the waiver process as in the past.

not find anyone willing to accept a vacant teaching post may have difficulty obtaining a waiver since it did not spend "all available state funds" during the year it fell out of compliance.

Declining enrollments can cause MOE difficulties in larger districts as well, although enrollment drops must be substantial to affect per pupil spending levels in any single year. Most states have tried to offset the effects of declining enrollments through "hold harmless" clauses or special pupil counting allowances in their state aid formulas. These provisions tend to postpone rather than negate the effects of enrollment drops on state aid allocations. Expenditure cutbacks tend to occur sporadically rather than gradually, so year-to-year comparisons may show dips even in per pupil spending. In large urban districts, particularly in states like Ohio, Illinois, and New York, enrollment declines have sometimes occurred suddenly when large industries leave a locality. SEA officials in these places expressed concern over the immediate and near-future compliance status of industrial centers like Youngstown, Dayton, Chicago, Binghamton, and Buffalo. An Illinois official noted that, in addition to Chicago's recent well-publicized financial and managerial difficulties, a substantial amount of Impact Aid has been lost there because of declining enrollments, further weakening the local revenue base.

OTHER PROGRAMS

In the ten states we visited we uncovered no past instances of compliance failure of MOE for either Title IV or Handicapped Education and only sketchy accounts of compliance or enforcement problems for Vocational Education. Title IV programs are in greater jeopardy than either of the others, in part because books and equipment are budget items easily cut in times of retrenchment, and in part because no local level requirement exists as an enforcement tool. At the same time, each of these program-specific MOE provisions can act as a political lever with which interest groups can influence budget levels and allocations.

ESEA Title IV

To date there have been no compliance problems with MOE for Title IV, but, again, a number of trends and recent changes in the regulations might bring some instances of noncompliance.

The expenditure figure that must be maintained under the Title IV requirement is total expenditure on program items by all recipient agencies in a state. While some districts in the recent past certainly have reduced spending on books, materials, guidance counselors, and the like, these decreases have always been offset by increases in other districts' and private schools' spending.

There are three ways in which compliance failures might arise in the near future. The first of these is the shrinkage in school district discretionary budgets. Most school districts are constrained on one side either by political or economic conditions from increasing total expenditures by any significant amount. On the other side, districts must meet contracted pay increases for teachers, increasing fuel bills, and rising interest rates. These pressures from two directions leave little room for discretionary purchases of library books or equipment. In Idaho, for example, school district budget figures at the beginning of FY 1980 indicated that the state would be in compliance with Title IV MOE. However, had the winter in Idaho been especially cold, most districts might have had to shift some funds from books and materials to heating fuel. The budgeted figures were close enough to the margin of noncompliance that even a slight

dip in the average temperature would have brought the state out of compliance. Other states reported nearly identical circumstances. A similar situation in New York was further aggravated by the fact that the districts there on "contingency budgets" (about one-third of the total) are precluded by law from buying library books or instructional equipment.

This brings us to the second possible reason for compliance failure. Individual districts may reduce their own expenditures substantially, but still receive Title IV aid provided the state as a whole is in compliance. Noncompliant LEAs can only be penalized if the entire state falls out of compliance, requests a waiver, and the request is denied. Districts, therefore, have little incentive to maintain their own expenditures on Title IV categories. Nor does the state have any enforcement leverage to use against school districts. In a time of fiscal stringency, therefore, when discretionary budgets are especially vulnerable, there may be no means for effectively inducing local MOE compliance for Title IV. Nearly all the states we visited reported recent sharp increases in the number of LEAs below the effort standard for Title IV. In Ohio, spending drops in several large cities will make statewide compliance extremely tenuous in fiscal year 1982.

Finally, a recent change in the regulations may make compliance more difficult. Until the most recent regulations went into effect, Title IV categories B and D were counted together in assessing compliance. As a result, scheduled salary increases for guidance counselors (funded under Part D) could compensate for reductions in expenditures for library books and materials (funded under Part B). The states we visited which reported separate expenditure trends for Title IVB and IVD showed that compliance failures for Part B will be likely when the expenditures are separately computed for MOE purposes next year.

Vocational Education

Vocational Education maintenance of effort at the local level is still enforced by state level authorities, subject, as always, to audit by the Education Department. Our interviews with the vocational education officials in the ten states provided the clearest instances of the political use of maintenance of effort requirements.

In one state several years ago the state legislature decided to shift what had been a one million dollar line item for secondary vocational education into the general state school aid budget. Given the way that that million dollars was distributed and its use monitored, it actually had always been the functional equivalent of general aid. No school district in the state reduced its own vocational education expenditures as a result of the shift in the state's budget, nor did state spending for vocational education decline. However, the vocational education officials in the SEA were able to obtain a ruling from the HEW regional office that the legislature's action constituted a reduction in effort for vocational education. A long series of correspondence between the state capitol and USOE ensued, and to our knowledge, the matter has yet to be resolved.

In any case, in its next session the legislature restored the line item for secondary vocational education. Ironically, to ensure that the vocational education funds from the state are not as fungible as they had been, the state legislature attached its own MOE provision to the restored line item.

Whether or not this particular legislature's action constituted a compliance failure is a matter of judgment. The important point of this story is the way in which the state's vocational education interests used the federal MOE requirement as a tool of political interaction. The threat of federal intervention and the loss of federal funds, however, can work in two directions.

Whereas many of the vocational education officials spoke of using MOE as a protection for their program's budget, several of the SEA officials we interviewed suggested that invoking federal regulations before their legislatures would be like waving a red flag in front of a bull. Especially in the western states, a threat of federal action could actually induce the proscribed behavior.

The vocational education program also exhibits the clearest contradiction between the fundamental objectives of the Act and the consequences of MOE enforcement. The Vocational Education Act establishes a set of guidelines for states to use in allocating federal vocational education aid to school districts. Districts with high unemployment rates, large proportions of high school dropouts, large numbers of low income families, and relatively small tax bases are supposed to receive the largest proportions of federal money. By stipulating total denial of funds as the penalty for *any* decrease in spending, the Vocational Education Act effectively assigns a higher priority to maintenance of effort than to any of the other allocation criteria. A district with high unemployment, large numbers of dropouts, a weak tax base, and so on—presumably the most likely candidate for some fiscal difficulty—would be denied federal funds if it cut its own spending on vocational education by as little as 1 percent.

It may have been Congress's intent to assign MOE the highest priority among all the allocation criteria, but at least one of the states we visited does not read the law in this way. This state determines each district's total (state and federal) vocational education aid allocation strictly according to the criteria of need written into the federal law. Districts that are out of compliance with MOE requirements receive their total allocation entirely from state sources. The "federal" dollars that would have been sent to the noncompliant but relatively needy districts simply substitute for state aid that would have been sent to districts further down the ranks of need. In other words, vocational education MOE provisions are a dead letter in this state. This practice has never been scrutinized under a formal audit, but the vocational education officials in the state claim to have received informal acquiescence from USOE.

The fact that the Vocational Education Act requires both state matching and maintenance of effort also generates resentment among most state level program officials. All states far exceed the five to one matching requirement of the law. The additional requirement that this "overmatching" be maintained renders the matching provision meaningless. At the same time, the additional matching requirements for special purpose programs under the Act have resulted in underuse of the special purpose funds (for programs serving handicapped, disadvantaged, and limited English-speaking students). LEAs cannot count monies which overmatch general aid toward matching for these programs, so many are unable to use the funds available. Furthermore, the MOE requirement means that new spending of this sort can never be retracted if the programs do not work out.

Some of our sample states do, in fact, enforce MOE requirements and have denied funds to a few LEAs. Two general fiscal and educational trends suggest that the number of noncompliant districts might increase substantially in the future. First, one response to fiscal containment on the state and local levels might be to shorten the school day. Many California school districts have already done so. In a shorter day there is less time available for "elective" vocational subjects, and the reduced vocational education enrollment might reduce expenditures. Second, the movement toward competency requirements for high school graduation is apparently shifting students into remedial basic skills classes and away from vocational courses in some places. This too might require a reduction in vocational educational expenditures. To date, however, neither of these trends has resulted in an increase in noncompliance.

Shifting demands for vocational education programs can also cause MOE difficulties when old programs are phased out and new ones of different character are phased in. Of all the federal

programs, this one is of necessity the most susceptible to demand changes and ought logically to be able to respond to these changes with only reasonable constraints.

Handicapped Education

Expenditures by LEAs for programs required by PL 94-142 have been increasing so rapidly in recent years that few SEAs have bothered to monitor MOE for handicapped education very closely. State governments have also increased their spending for special education, and most expect to continue this trend in coming years. However, one state we visited, Montana, decreased its state appropriations for this purpose for fiscal year 1981, and unless LEAs can make up the difference in spending from their general budgets, compliance problems are likely to arise at the state or local levels.

Even when state spending increases, there is the possibility of local noncompliance either in the special education budget overall or with respect to particular expenditure items within that budget. Some states we visited mentioned this possibility in districts that have other fiscal problems. In addition, as these programs mature, some unintended compliance problems may arise. It may be that the set-up costs of an educational program exceed the maintenance costs by a substantial margin. If so, districts may be unwilling or unable to maintain the relatively high initial expenditure levels indefinitely. Declining enrollments also affect the handicapped student population and the need for services. At some point, in the relatively distant future, expenditures might be reduced with no substantial cut in services.

In general, however, the MOE requirements of PL 94-142 do not present much immediate concern.

SUMMARY

Our investigation of the experiences of ten states regarding Title I maintenance of effort illuminated a wide variety of state and local legal and economic constraints which affect LEA spending for "free public education." Clearly, the existing MOE rules collide with state and local circumstances in many ways which cloud distinctions between unwillingness and inability to maintain education spending. In the next two years, increasing instances of noncompliance are likely to tax the enforcement and waiver-granting mechanisms of the Education Department in ways that they have not been challenged before.

There have been a few instances of noncompliance with vocational education MOE provisions; however, the most interesting aspect of these requirements is their use as a lobbying tool by vocational education interests. Also, the MOE requirement in this area may conflict in intention with the allocation and matching requirements in the law. Title IV program expenditures by LEAs are especially sensitive to the availability of discretionary funds on the local level. Trends toward diminishing discretionary budgets may induce compliance failures under Title IV MOE, as may the separation of Titles IVB and D for purposes of effort computation.

There have been no instances of noncompliance under PL 94-142, and few are anticipated in the near future. One state reduced its appropriations for handicapped education for next year, but it remains to be seen whether local spending will offset this decrease.

IV. AN ANALYSIS OF MAINTENANCE OF EFFORT REQUIREMENTS AND THEIR ENFORCEMENT

The previous two chapters have described the evolution and contents of maintenance of effort requirements and have presented the recent history of school district compliance with those requirements. Our investigations in ten states have led us to conclude that this school year (1980-1981) marks a major transition in the history of MOE requirements for federal education programs. As Congress and the Education Department deal with an unprecedented, but still small, number of violations, decisions will be made which will have repercussions far beyond the matter of whether or not some 100 school districts operate Title I programs in FY 1981. The choice of a particular response or set of responses to these violations will establish precedents that will, in turn, influence the evolution of the federal role in the U.S. educational system and the structure of federalism itself.

We find it somewhat surprising that a provision which had appeared very recently to be essentially a dead letter (Barro, 1978) should suddenly assume an important role in educational and intergovernmental policy. Nevertheless, the analysis presented in this chapter leads us to the conclusion that the MOE requirements, especially those associated with ESEA Title I, are significantly different in intent and effect from all other regulations attached to federal education programs. Furthermore, our evaluation of alternative legislative or regulatory responses to the current spate of compliance failures suggests that each of the options represents a significant change in the de facto structure of federalism.

WHAT DO MOE REQUIREMENTS DO THAT OTHER PROVISIONS DO NOT DO?

MOE is one of a series of legislative provisions intended to ensure the additivity of federal school aid. Congress intends to add to what states and localities would have spent on schools in the absence of federal programs. Congress does not wish, through ESEA, Vocational Education Aid, etc., to provide local tax relief or to subsidize other local government expenditure categories indirectly. The specific effects of MOE should be analyzed in the context of its role as one of several such additivity requirements. The requirements most closely related to MOE are the "supplement-not-supplant" and comparability provisions.

MOE as an Easily Monitored Additivity Provision

One essential distinction between MOE requirements and the other additivity provisions is that the former are much easier to monitor than the latter. Auditing compliance with supplement-not-supplant, comparability, or excess cost provisions can require a detailed investigation of relatively minute LEA allocative decisions. This is especially true in districts that operate a large number of separate (state and federal) categorical programs, sometimes in the same classroom (Kimbrough and Hill, 1980). Monitoring maintenance of effort simply requires observing a single number from year to year and making sure that the accounting practices

generating that number are not devised as subterfuges. To be sure, a district can comply with MOE and still supplant local effort with federal funds. In other words, MOE is a very imprecise mechanism to ensure additivity and probably must be augmented by such loophole-closing devices as supplement-not-supplant provisions. However, the high cost of detecting supplantation may preclude the use of this more precise mechanism as the tool of standard, annual monitoring of additivity. MOE requirements may, therefore, be viewed as a crude but relatively inexpensive mechanism for monitoring minimal compliance with the additivity intentions of federal school aid policy.

If MOE were merely a crude device for detecting supplantation, our analysis could end here with the conclusion that these provisions were of trivial independent policy significance. However, MOE provisions—especially those associated with ESEA Title I, ESAA, and IESSAA—are different from the other additivity provisions in another way. They impose distinct, additional requirements on LEA behavior.

A school district that had decreased local expenditures proportionally on all educational programs—and, therefore, on all children—would be in compliance on supplement-not-supplant and comparability grounds but out of compliance with MOE requirements. The specific intent of MOE provisions in general, therefore, must be to protect specific categories of expenditure from any decrease at all.

The Title I MOE provision, however, has an additional effect. A school district that cut its spending on general educational programs (not vocational education, not educational materials or guidance counselors, etc.) for "uncategorized" children (not Title I eligible, not limited English speaking, not handicapped, etc.) would be in compliance with all of the additivity requirements except MOE for Title I. It is possible to imagine a Title I MOE provision that was strictly analogous to those attached to vocational or special education. Such a provision would require that local expenditures on services for Title I eligible children not decrease from one year to the next. This more narrowly targeted MOE provision for Title I would conform to the view that the federal role in the U.S. educational system was confined to augmenting services for specific populations and encouraging certain specific practices.

The actual provision goes significantly beyond the traditional, circumscribed federal role. Unlike all other federal regulations, which are intended to protect the interests of certain narrowly defined groups of children, Title I MOE extends the protection of federal enforcement mechanisms beyond the target populations and programs to general programs for uncategorized students.

It does not seem that this distinction has been made explicit as MOE requirements have developed over the years. None of the Congressional Records nor Executive Branch documents we have examined refer to this essential difference between Title I MOE and all other federal educational provisions. We suspect that the original impetus for the design of this requirement and its subsequent evolution derives from an intent Congress had in 1965 but has since substantially discarded.

The Original Intention

Recall that ESEA Title I was originally viewed by many of its proponents as a general school aid program. The targeting provisions had both a political and programmatic impetus. By tying aid payments to the characteristics of children, legislators were able to circumvent constitutional and political objections to aiding parochial schools. At the same time, school districts serving large concentrations of low income children were seen as most in need of

general assistance. Many (possibly most) proponents, therefore, viewed ESEA as a general aid program (Meranto, 1967).

Now if Congress had, in fact, written a targeted general aid law with the intention that all future increases in resources in poor school districts would come from the federal government and with the expectation that the rate of inflation would remain very low, a maintenance of effort provision alone would have ensured the additivity of federal money. That, in fact, is what Congress did. The only additivity requirement in the 1965 Title I Act was maintenance of effort.

Congress's original intentions with respect to ESEA are history now. Serving specific groups of children, not aiding certain types of districts, has become the established *raison d'être* of federal educational policy. As this more circumscribed role has been defined, a new set of additivity requirements has evolved. To insure that the intended groups—and only the intended groups—benefit by the federal involvement, the federal government has, in a certain sense, entered into an adversarial relationship with state and local educational authorities. SEAs and LEAs have strong incentives to transform Title I assistance into general aid. To maintain the integrity of its targeting intentions the federal government must vigilantly monitor the detailed allocation of resources on the local level. The means of enforcing this highly specific targeting—supplement-not-supplant, excess cost and comparability requirements—were added to the original MOE provision. As loopholes were discovered and as instances of noncompliance were perceived to escape sanction, all of the additivity regulations were tightened and their enforcement was centralized.

Maintenance of effort provisions were caught up in this tightening and centralizing process. The story is told in Chapter II. However, no one seems to have recognized that one particular additivity provision, MOE for Title I, was essentially different from the others. The intention that drove the process of tightening and enforcing supplement-not-supplant, comparability, and non-Title I MOE—i.e., the intention to confine the federal interest to certain specific groups or expenditure categories—does not apply to Title I MOE.

In other words, the Title I, ESAA, and IESSAA provisions expand the federal interest in education in an important way. These provisions are inappropriate to the extent that the federal role is seen as strictly confined to certain categorical programs. If the federal intent is to establish itself as the patron of the public education sector as a whole, then rules protecting general programs for uncategorized pupils, like Title I MOE, may be an appropriate policy instrument. However, every other instrument of federal education policy—all of the funding programs and all of the regulations—answers to a narrowly defined set of federal interests. In protecting education in general, Title I MOE stands alone.

ALTERNATIVE RESPONSES TO WIDESPREAD NONCOMPLIANCE

In Chapter I we argued that MOE was an imprecise policy instrument. Strict enforcement of the requirement that districts not reduce their dollar spending must be inequitable in several respects and may induce behavior exactly contrary to Congress's more general intentions. The history of MOE provisions presented in Chapter II showed that these requirements have evolved to the point where the Education Department is allowed very little discretion or leeway in the granting of waivers. Grounds for waivers are narrow, and very few of the districts now out of compliance seem to qualify.

Chapter III presented evidence that a much larger but still very small number of districts are now out of compliance than have been in the entire history of MOE requirements. Further-

more, there is good reason to expect that this year's increased incidence of noncompliance is the beginning of a trend. In California, the state surplus of tax revenues which had prevented major spending reductions has evaporated. Massachusetts has just passed a tax-cutting initiative, and it is unclear whether the state government will be willing or able to "bail out" local school districts. The financial problems of cities like New York and Cleveland are far from resolved. All of this suggests that circumspect policymakers would expect a continued increase in the incidence of violations of MOE provisions. Finally, the beginning of this chapter pointed out that the most troublesome MOE provision—for Title I, ESAA, IESSAA—may reflect a very different Congressional intent from that which informs all other federal expenditure regulations.

Under these circumstances Congress may wish to act to change MOE requirements either as part of reauthorization of ESEA or even before the scheduled reauthorization. Certainly Congress will be called upon to act quickly by representatives of the noncompliant districts. Congressional action (or intentional inaction) on MOE will take place in the context of whatever general trends are influencing the evolution of federal education policy. MOE provisions designed as part of an incremental change which preserves the basic categorical structure of federal programs would be different from the requirements built into a consolidated program of block grants. In the former case, the category specific MOE requirements would be retained, but possibly modified to account for any inequities of strict enforcement. If the commitment to a limited, categorical federal role is to be strictly retained, then some revision of the Title I MOE requirement might be called for. If Congress opts to consolidate most federal programs, but still wishes to guard against supplantation, then the existing Title I requirement might be the only additivity provision needed.

In either case, however, Congress will have to decide how much flexibility to build into the requirements. The remainder of this chapter presents a description and analysis of five possible alternative responses to an increased incidence of noncompliance.

A sixth possible alternative will not be discussed in any detail. We have mentioned the fact that one potential source of inequity in current MOE provisions involves the imperfect relationship between expenditures and tax effort. Why not, it might be argued, use some better measure of tax effort to indicate compliance with Congress's additivity intentions? The possibility of developing such measures was extensively discussed in a previous, unpublished analysis undertaken by Rand for the Assistant Secretary for Education of HEW. That analysis concluded that, while feasible, the development of valid, reliable, and widely accepted measures of tax effort was a long way off.[1] For this reason, the use of such measures cannot solve the immediate problem of increased noncompliance. We have, therefore, forgone an extensive discussion of that alternative.

General Approach I: Take No Action. Enforce Current Regulations

Suppose the United States has, in fact, entered a period of marked fiscal retrenchment on the state and local levels. If so, the various categories of state and local government expenditure —public assistance, highways, criminal justice, education, etc.—will have to share the burden of this new stringency, just as they all shared the benefits of a growing public sector (Pascal et al., 1979).

[1]Copies of the document reporting these findings can be obtained from Rand with permission from the Office of the Under Secretary of Education for Planning and Budget.

Federal education policymakers, most notably the members of the relevant Congressional committees, will have to decide how to react to this trend toward fiscal containment. One possible reaction would be to take steps to ensure that whatever may happen to other local government budget categories, public school spending must not be reduced. By denying Title I funds to 100 or so school districts for one year, the federal government will be sending out the clear signal that a severe penalty is attached to absolute reductions in school budgets. Such a signal would be received by the California Legislature as it designs future state aid formulas and by other legislatures and voters as they consider fiscal limitation measures and budget reductions. The mechanism for sending such a signal is in place. If current regulations are enforced, funds will indeed be denied. Furthermore, an attempt to deal with noncompliance by changing the law might create a climate of disrespect for all federal regulations.

At the same time, though, enforcement of current regulations would be counterproductive from the point of view of the fundamental objectives of federal education policy. The only people to suffer by the denial of Title I money to some 100 school districts would be the Title I eligible children in those districts and their families.

If fiscal containment is a major trend, strict enforcement of current regulations might be inadvisable for another reason. Recall that almost all federal intergovernmental aid programs require maintenance of effort. Some of these MOE provisions are strict; others are more flexible. A locality faced with fiscal limitation or a financial crisis would be likely to respond by cutting its budget in those areas least protected by federal MOE requirements (Walker et al., 1980). The local schools would probably fare rather well under such circumstances, as might highway construction or Medicaid programs. However, local budgets would be designed less in accordance with local priorities and needs than with an eye to which federal aid programs had the strongest MOE provisions. The current additivity provisions were designed by Congress during a period of rapid secular growth in state and local budgets. For this reason, little thought had to be given to the possibly adverse consequences of these provisions. Now that budgets are declining, the possibility has arisen that Congress has, by a number of incremental and seemingly unrelated decisions, instituted a major change in the governance structure of federalism. A situation may have evolved in which decisions about local budget allocations are so influenced by federal policy that there is little room for local choice.

Furthermore, these circumstances create a troublesome set of incentives within Congress. As each Congressional interest—highways, law enforcement, health care, public assistance, education, etc.—realizes that the strength of its MOE provisions determines how well it survives fiscal limitation, each committee may want to tighten its own MOE requirements. The proportion of local budgets written in Washington will increase, and decisionmaking will become even more centralized.

The point of this discussion is that the Education Committees, as they decide whether or not to take action regarding widespread noncompliance, ought to consider the effects of their action (or inaction) within the context of federal governance relationships and the collective actions of a variety of Congressional interests.

This analysis of the possible implications of strict enforcement also points out an important area of ignorance regarding the current effects of MOE provisions. Given the variety of additivity requirements for each of the federal categorical programs, it would be useful to know exactly what proportion of any given school district's budget is actually determined by federal financial regulations. If this proportion is large, as it may be in some highly federally dependent districts, the governance structure may already have shifted and the specter of de facto federal control may already have materialized. Whether or not this is true is worth knowing. If it is true, it is probably an unintended consequence of federal policy, the causes of which may require remedy.

Suppose, then, Congress determines that the current requirements err on the side of too little flexibility so that either (1) funds will be inequitably denied to some districts or (2) the division of powers within the federal system will be eroded. There are several ways in which more flexibility might be built in by granting more discretion either to the Secretary of Education or to State Education Authorities.

General Approach II: Grant More Discretion to the Secretary of Education

Under current legislation, the Secretary of Education is empowered to grant waivers of MOE requirements. Such waivers may only be granted for one school year. The grounds on which waivers may be granted are very precisely and narrowly defined and are written into the legislation. The circumstances in which most of the presently noncompliant districts find themselves are explicitly ruled out as grounds for waivers. Under current law, therefore, the Secretary will not be able to alleviate any of the potentially inequitable consequences of strict enforcement.

One possible approach Congress might take fairly quickly would be to grant the Secretary discretionary waiver authority. Such a change would involve merely repealing the part of the current law that explicitly defines "exceptional circumstances," thereby allowing the Secretary to judge, on a case by case basis, which circumstances were and were not "exceptional." The Secretary might also be given authority to grant waivers in order to remedy "gross inequities." Such waivers might also allow districts to "ratchet down" to a lower expenditure base for future MOE comparisons.

One justification for this approach derives from our findings in the states we visited. Most past and present instances of noncompliance with MOE were accompanied by complex histories and detailed and unusual situations. Peculiarities of state school aid formulas, especially with respect to the effects of declining enrollment, often played a role. Some expenditure reductions were perfectly reasonable and responsible responses to long term economic, demographic, and political trends. Sometimes changes in school budgets that violate MOE could actually enhance some other federal policy interest such as a shift from vocational education to academic courses for minority students or the reduction of New York City's financial deficit. The narrowly defined categories of exceptional circumstances written into the law seemed much too schematic to account for the peculiar, and occasionally poignant, situations school districts encountered. The causes of most noncompliance seem to fall into a grey area between the narrowly defined exceptional circumstances written into the law and a clear intent to supplant local revenues. Given the complexity of school district circumstances, a more flexible, discretionary approach might seem appropriate.

There are, however, two severe problems with the discretionary waiver approach. The first has to do with procedural requirements. The processing of waivers through the Office of Education took, on the average, four to six months, and this when only a handful of waiver requests were received each year. In the Fall of 1980, we were faced with several score requests to be processed through a new Department where spheres of responsibility and chains of command have yet to be completely defined. During our state visits we discovered more than one instance where a district had been unable to operate a Title I program for one year because of USOE's tardiness in issuing a waiver. It might be possible for the Education Department to establish an efficient procedure for evaluating waiver requests in time to deal with the

current spate of noncompliance. Certainly such procedures are a prerequisite for the discretionary waiver approach to work.

The second problem with discretionary waivers is more fundamental. Such a change would establish the Secretary of Education as the final arbiter of financial decisions made by federally dependent, fiscally constrained LEAs. This would constitute an even more profound change in the governance of the federal system than would strict enforcement of current provisions. The latter involves the federal government in local budgetary processes only indirectly. The federal carrot and stick will be more obvious determinants of local government decisions than they had been before the era of fiscal containment. However, enforcement of objective regulations would not involve the Education Department in second-guessing the decisions of LEAs. Issuing discretionary waivers, on the other hand, would require detailed analyses of the specific fiscal circumstances of each noncompliant locality. Serious administration of such a waiver program —that is, anything other than a blanket granting of waivers to any district that asked for one—would establish precedents defining standards of acceptable behavior given a variety of fiscal circumstances. Again, the effect on the federal system would be profound.

General Approach III: Return Waiver Authority to the States

Before 1976, SEAs had the authority for monitoring maintenance of effort compliance and for granting waivers. The shift of these powers to the Commissioner of Education under the 1976 amendments was implicit. We found no record of an explicit discussion of the appropriate level of authority for monitoring and enforcing these particular provisions. There may have been some dissatisfaction in Congress with the way these requirements had been handled by the states or some perception that noncompliance had been escaping sanction, but no concrete evidence on either of these points appears to have been presented.

The problems presented in our evaluation of the previous approach—slow procedures and an unintended restructuring of federalism—would be alleviated if discretionary waiver authority were granted to, say, the Chief State School Officers instead of the Secretary of Education. State agencies are more likely to have the information required to evaluate the particular circumstances of individual school districts. SEAs are also more experienced than ED at processing administrative forms and requests from the LEAs within their jurisdictions. The procedural delays would, therefore, be reduced if authority were transferred to the states. Furthermore, granting discretionary waiver authority to the Chief State School Officers would involve no major change in the governance structure of the federal system. LEAs are, and have always been, the creations of state governments. Most SEAs keep their school districts on a fairly short leash with respect to financial practices. Close monitoring of LEA budgets of SEAs, therefore, would not constitute a new centralization of governmental power. Finally, there is substantial precedent for assigning enforcement authority for federal programs to state education agencies. Many of the regulations associated with Title I, Vocational Education, and other programs are enforced by SEAs subject to occasional audit by the federal government (NIE, 1977).

As with the other general approaches to the increased incidence of noncompliance, turning waiver authority over to the SEAs would create some problems. First, whatever rationales might have justified the assignment of waiver authority to USOE in 1976 might still be valid. Presumably someone in 1976 must have believed that the states were not doing an adequate job of enforcing these requirements. It might have been felt that few SEAs enjoyed enough political independence to penalize noncompliant school districts. The potential inappropriate-

ness of state agency as the chief enforcer of MOE may be even more apparent today than it was in 1976. After all, the current instances of noncompliance in California are the result of the state legislature's decisions, as reflected in the school district "bail out" formula, not of the choices of individual LEAs.

One consideration that mitigates in favor of SEA enforcement is the potential usefulness of MOE provisions as lobbying tools. During our state visits we found that vocational education advocates made the most effective use of MOE sanctions as a threat against their legislatures, but other bureaus within an SEA can and do make use of this strategy. By giving direct enforcement power to the program advocates in each state capital, Congress might actually strengthen local political support for the intentions of federal policy.

Even though state level enforcement might be a desirable strategy under "ordinary" circumstances, it is unlikely that a single Congressional committee or political interest group would want to adopt such an approach during a period of fiscal contraction. We have already referred to the possibility that how well different local government programs fare during a period of fiscal limitation may depend on how well each category is protected by federal MOE requirements. For the education interests to turn enforcement of MOE over to the state at this point could amount to a form of unilateral political disarmament. In other words, during a period of fiscal constraint and the consequent budgetary conflicts on the local level, no single interest group will have an incentive to surrender any available weapon.

We see, therefore, that it may not be easy to build more flexibility into MOE requirements. Granting discretionary waiver authority to either the Education Department or the states would be risky—the former would risk the decentralized structure of the federal system and the latter would risk a more-than-proportionate reduction of educational spending in a period of fiscal containment. Two other general approaches could reduce both potential risks.

General Approach IV: Modify the Requirements and/or Penalties for Noncompliance

Both the incidence of noncompliance and the potential adverse effects of rule enforcement might be minimized by changes in the standards for MOE compliance or the sanctions for noncompliance. Many of the state officials we interviewed recommended changes such as a return to earlier slippage allowances or the use of multi-year averaging as means for allowing some flexibility in year-to-year spending levels while retaining the MOE concept. Many also suggested a move to pro rata reductions rather than total withholding of federal funds in cases of noncompliance. Where a state action is responsible for LEA noncompliance, one might even reduce the state's federal program allocation by the amount of LEA shortfalls rather than allowing the full burden of the penalty to fall on individual districts already suffering from state-induced revenue losses. Other recommendations made by state officials to "fine tune" the MOE provisions of major federal programs are discussed in Appendix A.

All of these modifications would retain the character of MOE requirements while diminishing to varying degrees their potency for affecting budgetary decisions at the local level. On the one hand, the changes might be seen as diluting the effectiveness of MOE provisions for protecting education programs from cuts. On the other hand, they might provide relatively simple means for minimizing the potentially inequitable consequences of strict enforcement of federal spending requirements during a time of necessary readjustments to rapidly changing fiscal, economic, demographic, and political conditions in a number of states and localities.

General Approach V: Design a Unified Intergovernmental Aid Policy

Two themes run through our discussion of the first three general approaches to widespread compliance failure. First, the choices Congress makes with respect to this issue may introduce important but unintended alterations in the governance of the federal system. Either strict or discretionary enforcement of the current regulations by the Education Department would involve a centralization of local government decisionmaking. Most districts in the country would be unaffected by enforcement, but federally dependent districts subject to stringent budgetary limitation might be forced to give up a great deal of their fiscal independence in exchange for the federal aid they receive. Second, during a period of fiscal containment, Congress could become the locus of conflict among activities traditionally in the domain of local governments. Criminal justice interests, health care interests, highway interests, higher education interests, and elementary and secondary education interests might look to their supporters in Congress for protection from the threats of fiscal containment through strengthened and strictly enforced MOE and supplement-not-supplant provisions.

Unless we wish the federal government to become the arbiter of all state and local government activity, steps should be taken to avoid these possibilities. There is little that education policymakers can do by themselves to counteract these potential threats to federalism. What will be needed is a unified Congressional policy with respect to intergovernmental relations, and a set of Congressional procedures for ensuring that various interests conform to the established policy. An analogy with the Congressional budgetary process is apt. The collective actions of all of the independent authorization and appropriations committees can have unintended, adverse macroeconomic consequences unless Congress as a whole accepts some constraint on budget totals. In the same way, competition among interests can adversely affect the integrity of the federalist balance of powers unless Congress imposes some constraints on how individual pieces of legislation affect the independence of state and local governments.

Defining the proper federal role in intergovernmental relations is a long-term undertaking. Building internal Congressional procedures and defining general limits on the extent to which Congress will allow itself to regulate local government behavior is likely to take several years. This will do nothing to alleviate any potential inequities in strict enforcement of current Title I regulations. Some general modification of MOE requirements across all federal aid programs might be a more appropriate response to the current problem. One such reform—a pro-rata reduction in federal aid rather than a complete denial of funds—was seriously considered this year by the Senate Subcommittee on Intergovernmental Relations. In any case, we suspect that the new problems school districts seem to be facing in maintaining their effort are shared by all local governmental agencies that receive federal assistance. If so, without some common response from Congress, the reductions in local spending categories may reflect the vicissitudes of unsystematic Congressional action rather than anyone's conscious priorities.

A coordinated Congressional policy on intergovernmental relations could be instituted through a number of mechanisms. Some informal mechanisms would involve upgrading the roles and broadening the responsibilities of the existing subcommittees on intergovernmental relations. This would require no more than a decision by the leaderships of the two Houses to more in this direction. More formal mechanisms might require Congressional Budget Office review of the impacts of major legislation on the federal balance of powers. An even more dramatic policy might require that all legislation involving any non-federal government be referred jointly to the intergovernmental relations subcommittees as well as to the committee of direct substantive interest.

A complete analysis of these and other mechanisms for developing a uniform Congressional

policy on intergovernmental relations is beyond the scope of this report, as would be any extensive discussion of what that policy should be. However, we do recommend that Congress begin devoting more intensive scrutiny to the effect of its decisions on the balance of powers in the federal system.

CONCLUSIONS

We have suggested five alternative general responses to a markedly increased incidence of noncompliance with MOE provisions. Three of them involve unilateral action by education policymakers. None of these is entirely beneficial. No matter whether enforcement is strict or discretionary or is turned over to the states, some of the potential outcomes are unintended and, to many, undesirable. Federal enforcement, whether strict or somewhat permissive, could substantially change the locus of decisionmaking within the federal system. Turning the problem over to the states might harm the competitive position of the education sector in the struggle for scarce local funds.

If Congress values our system of federalism, great care will be necessary to ensure that local control of spending decisions is preserved. If local control is to be sacrificed in jurisdictions heavily dependent on federal aid, then Congress should prepare itself to allocate local budgets at least as effectively as it does the federal budget. In either case, the issues we have presented in this report direct our attention to Congress and the federal system.

Appendix A

SUGGESTIONS FOR CHANGE: THE VIEW FROM TEN STATE CAPITALS

In the course of our interviews with state education and legislative officials we solicited their suggestions as to how MOE requirements might be improved. In general, we found that most program officials supported the general intent of additivity requirements. A majority, however, felt that the current requirements were too stringent and the sanctions for violations were too severe.

A great deal of dissatisfaction was voiced with the double requirement of matching and MOE for vocational education and with the budgetary inflexibility imposed by the detailed MOE requirements under this program.

The remainder of this appendix contains a summary of the suggestions from the ten states we visited.

ALABAMA

Although all the state officials agreed that the proportional penalties accompanying waivers were too harsh, the fiscal officer found the penalties both unfair and counterproductive to federal policy goals. If the maintenance of effort provisions are indeed intended to prevent local districts from shifting funds away from special target pupils at their discretion, according to this official, the provisions are directed at the wrong level of administration in the Alabama financial structure. Since districts rely heavily on state funds, which are appropriated by line items for specific programs, local officials have little discretion over their district expenditures. Why, therefore, should the LEA be held responsible for something they cannot control? And if the LEA is out of compliance, who is punished by the cutoff of federal program funds but the target populations the federal policies are intended to aid? One suggestion for dealing with economic decline or budget-balancing efforts was that MOE be based on a proportion of available state and local funds rather than based on a dollar amount.

CALIFORNIA

The officials with whom we spoke in the program offices, Administrative Division, and the legislative analysts office endorsed the maintenance of effort concept nearly unanimously, at least insofar as it reflects the non-substitution of federal funds for state and local funds. In each case, however, the suggestion was made that the requirement should be fashioned to achieve a nonsupplantation effect rather than prohibiting any reductions in state and local expenditures. There was also a consensus that the penalty for noncompliance with MOE requirements should be a proportionate rather than a total reduction of federal funds in the relevant program area. The Director for Vocational Education argued that an appropriate matching requirement would be better justified than the current maintenance of effort provision for vocational education. He also argued for a broader definition of vocational education which would include state

and local priorities in such areas as career exploration, career decisionmaking, and the acquisition of employability skills. Efforts currently being made in these areas cannot be included among the programs whose expenditures count toward MOE compliance.

One legislative analyst argued for a more flexible use of base years for computing effort, perhaps using the average of several preceding years as a means of controlling for minor fluctuations caused by one-time expenditures or initial effects of revenue base declines. Several program officers argued that some consideration should also be given to the level of past state effort in providing programs for the various target populations.

IDAHO

Title I officials argued that the maintenance of effort requirement should be modified to allow for the special circumstances of very small districts.

Vocational education officials pointed out a contradiction in federal legislative intent. The law lists a number of criteria for ranking districts according to need. However, the maintenance of effort provision effectively outranks all other criteria in determining the allocation of federal aid. The neediest district in the state would drop off the eligible list given a small decrease in local support. The Idaho officials wondered whether this was the intent of Congress. The vocational education program officers also suggested that the zero percent slippage factor was too inflexible since it implies that no local program ought ever to be reduced, although program design ought to be especially flexible in the area of vocational education. These provisions encourage the maintenance of inappropriate programs.

ILLINOIS

Illinois continues to have serious problems with the maintenance of effort provisions contained in a variety of federal education programs. These provisos, state officials stated, permit the federal government to reduce funding for these programs with impunity while holding state educational agencies and local educational agencies hostage to the maintenance of effort requirements. It is their position that current maintenance of effort requirements are inequitable. Although the State Board can report that the state and local educational agencies are in compliance with the law, a change in maintenance of effort requirements is needed. They strongly recommend provisions be written into law allowing state maintenance of effort requirements to be reduced by a percentage equivalent to any federal reduction in allocations. In addition to the specific suggestions discussed below, the state officials also wished more flexibility in the requirements and greater consistency in the regulations across the various programs.

In general, the Title I officials felt that the federal maintenance of effort regulations were too inflexible and too difficult to monitor. They also recommended a return to the 5 percent slippage allowance.

Along with the general feeling that the maintenance of effort requirements for special education tended to stifle new program development and reduce flexibility, one particular criticism of the present regulations was voiced by an official. His complaint focused on the provision that prohibited supplanting of state and local funds on either an aggregate basis "or for a given expenditure." He stated, "[T]he general concern is that anything like adequate enforcement and/or monitoring of each 'particular cost' would pose extreme demands on our

already overburdened accountability systems. . . . It is, in fact, an unnecessary requirement in light of other federal regulations which, if complied with effect the same goal."

State Vocational Education officials, like others interviewed, recommended that some type of unusual circumstances rule, in addition to those now available in the Vocational Education Amendments, is needed. This would give the State Director the flexibility of initiating a ruling concerning any new unusual circumstance that may from time to time appear on a statewide basis. The Director also predicted that stricter waiver restrictions and the elimination of the slippage allowance would encourage very inaccurate expenditure reports by local educational agencies. By understanding actual expenditures during high spending years, the district could thereby build itself a cushion against future budget cuts.

MASSACHUSETTS

The State Title I director expressed the view that, insofar as MOE provisions reflect a nonsupplantation concern, they are not really necessary any longer. He feels that the intent of Title I is well accepted and that the current emphasis on testing buttresses support for Title I programs. Given the existence of a nonsupplantation requirement in Title I and his perception that a desire to supplant is not prevalent, he sees no need for a separate maintenance of effort provision for Title I. The Vocational Education head agreed with this point of view, recommending elimination of the provision as he sees it as extraneous and virtually meaningless to the program's effective operation.

Officials responsible for Title IV and Special Education were more supportive of the MOE requirements for their respective programs. They have found the provisions useful in their efforts to encourage state and local spending in the targeted program areas, and would not recommend any substantial changes at this time. In general, they favored the retention of provisions which allow some flexibility in computing maintenance of effort, such as the choice of aggregate or per pupil expenditures.

MONTANA

Each official we spoke with mentioned the "small school district" problem.

The legislative analyst suggested that MOE requirements severely limited the state legislature's budgetary flexibility. Often the only way to "send a message" to a weak state program is to cut their budget by a substantial amount for a period of time. By threatening a full cut-off of federal funds, MOE regulations effectively remove this tool from the legislature's hands.

The official in charge of Title I argued strongly that authority to grant waivers of MOE provisions be returned to state authorities. Monitoring of most Title I provisions is left in the hands of state officials, subject, of course, to audit by the Education Department. Why, then, he asked, shouldn't responsibility for monitoring MOE provisions and granting waivers be left in state hands? As an example of the cumbersomeness of the federal waiver process, the official pointed to the case of a small district that had been unable to operate a Title I program because of HEW's tardiness in granting a waiver.

NEW YORK

We found a solid consensus among New York state education officials that federal provisions to prevent supplantation from occurring are necessary and justifiable, but that current MOE requirements do not satisfy this intent appropriately. Not surprisingly, considerable support was expressed for provisions which allow flexibility in computing maintenance of effort, such as the choice of per pupil or aggregate expenditures, the choice of comparison years for Title I, and the now-eliminated slippage factors. Several officials suggested that an average of several prior years' expenditures be used as the base for computing maintenance of effort to allow flexibility for temporary aberrations in expenditure patterns.

Officials in the Finance Division suggested that a common MOE requirement be devised for all federal education programs, and that proportional reductions in federal funds be made if effort is not maintained. A return to state enforcement of MOE requirements was also suggested. The Title IV-B Director argued for a locally targeted requirement rather than the current Title IV provision. The Title I director argued that if the intent of that program's requirement is to ensure that service quality does not diminish, the appropriate measure would address program quality and pupil outcomes rather than expenditures.

OHIO

Several officials suggested that the slippage allowances for the applicable programs be reinstated at their former levels to assist education agencies who are experiencing fiscal retrenchment. The Title I Director went still further, suggesting a liberalization of the slippage allowance to 10 percent. The Special Education Director also proposed that a local waiver policy be developed for PL 94-142.

The State Director for the Federal Assistance Division suggested several alternatives. One suggestion is that the states be given discretionary authority to determine what constitutes an exceptional and unforeseen circumstance for waiver purposes. Another possibility is that the level of effort to be maintained be defined in programmatic rather than dollar terms. Each state would define its basic program—the definition would be included in the state plan and subject to federal approval—and would have to maintain the level of services described in the basic program definition. A third proposal is to consider maintenance of effort on a statewide basis for Title I as well as Title IV. Finally, and most importantly in his view, Congress and Education Department officials could rethink their entire approach to regulations of this type, emphasizing qualitative rather than quantitative tools to measure states' compliance with the intent of federal legislation. This would involve more frequent and rigorous monitoring activities in states and localities and more careful attention to and emphasis on state plan approval.

TEXAS

Each program director complained that the regulations were vague and often in conflict with the most recent statutes. One official suggested that the maintenance of effort requirements be consistent across all federal education programs. They also nearly universally believed that the proportionate entitlement cuts which accompany a waiver are an unreasonable penalty, especially in the case of small school systems where there was not a deliberate intention to reduce effort. In the opinion of the Title I Director, if a district takes a waiver based

on declining enrollment, the federal penalties and state allocation formulas make it very difficult for the district to recover.

The most forceful recommendation came from the Title I and Title IV Directors who believed that the state education agencies should be given the authority to grant waivers in certain, narrowly defined instances. Since the state officials are more familiar with the problems facing individual districts and are in a better position to determine if a budget reduction was unintentional, such a shift in waiver authority would speed along waiver applications and decrease the administrative burden on both state and federal officials.

In lieu of this proposal, the Title I Director suggests that maintenance of effort be determined on a statewide rather than an individual district basis.

WASHINGTON

The Director of Vocational Education argued that MOE requirements are so vague as to be meaningless except as a source of uncertainty in federal funding. The accounting categories in vocational education are so broad and poorly defined, especially in small districts with unsophisticated management, that a specific percentage slippage factor is almost impossible to monitor. It is possible, he argued, for state officials to determine whether or not a district has been essentially maintaining effort based on qualitative knowledge of circumstances in each district. MOE provisions, therefore, can be a powerful policy lever in the hands of the State Board of Vocational Education, but only if authority for granting or denying waivers is placed directly in the hands of the responsible state officials.

The Title I officials also argued that the qualitative knowledge of state officials was sufficient for them to determine whether any reduction in spending amounted to a purposeful attempt to supplant local revenues with federal funds. It is difficult to convey this specific local knowledge to HEW officials; therefore, federal judgments cannot be as accurate as those of state officials.

This official also argued for a pro-rata reduction of aid in the event of noncompliance, and for some more flexible allowance for local economic conditions in the regulations.

Appendix B

TEXT OF THE REGULATIONS

TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

P.L. 89-10 as amended 20 U.S.C. 241a et seq.

Statutory Requirement

Public Law 95-561 (Education Amendments of 1978)

Sec. 126(a) MAINTENANCE OF EFFORT.—(1) Except as provided in paragraph (2), a local educational agency may receive funds under this title for any fiscal year only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures (as determined in accordance with regulations of the Commissioner) of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than such combined fiscal effort per student or the aggregate expenditures for that purpose for the second preceding fiscal year.

(2) The Commissioner may waive, for one fiscal year only, the requirements of this subsection if he determines that such a waiver would be equitable due to exceptional and unforeseen circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency. In any case in which a waiver under this paragraph is granted, the Commissioner shall reduce the amount of Federal payment for the program affected for the current fiscal year in the exact proportion to which the amount expended (either on an average per pupil or aggregate basis) was less than the amount required by paragraph (1). No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort required, under paragraph (1), for years subsequent to the year covered by such waiver. Such fiscal effort shall be computed on the basis of the level of funding which would, but for such waiver, have been required.

(3) The Commissioner shall establish objective criteria of general applicability to carry out the waiver authority contained in this subsection. 20 U.S.C. 2736.

Regulations

Proposed Rules, 45 F.R. 39712 (June 11, 1980); and 45 CFR 116-116a.

§116.91 Maintenance of Effort

(a) Basic standard. (1) Except as provided in §116.92 and paragraphs (f) and (g) of this section, an SEA may approve a Title I application from an LEA or State agency only if that agency demonstrates the following in the application: Its expenditures of State and local funds for the free public education of children—on an aggregate or per pupil basis—are not less for (i) the first fiscal year preceding the fiscal year in which the agency is applying for Title I funds than for (ii) the second preceding fiscal year.

(2) Except if the LEA or State agency did not participate in Title I in the preceding fiscal year, the agency may not use as a second preceding fiscal year a fiscal

year that the agency did not use as a first preceding fiscal year on a previous application.

(b) Meaning of 'per pupil basis.' As used in this section, 'per pupil basis' means per child included in ADA.

(c) Expenditures to be considered. The expenditures the SEA shall consider in determining the LEA's or State agency's compliance with the basic standard in paragraph (a) of this section are—

(1) State and local expenditures for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student activities; and

(2) expenditures of Federal funds for free public education for which the LEA or State agency is not accountable to the Federal Government. These include expenditures of funds under the School Assistance in Federally Affected Areas program.

(d) Expenditures not to be considered. The SEA may not consider the following expenditures in determining the LEA's or State agency's compliance with the basic standard in paragraph (a) of this section:

(1) Any expenditures for community services, capital outlay, or debt services.

(2) Any expenditures of Federal funds for which the agency is accountable to the Federal Government. These include expenditures made from funds provided under Title I or Part B (instructional materials and school library resources) and Part C (improvement in local educational practice) of Title IV.

(e) Rounding off expenditures. For purposes of determining compliance with the basic standard in paragraph (a) of this section, expenditures may be rounded off in the following manner:

(1) Per pupil expenditures for each of the fiscal years being compared may be rounded to the nearest ten dollars.

(2) The aggregate expenditures for each of the fiscal years being compared may be rounded to the nearest 100 dollars.

(f) Two percent leeway. For purposes of determining the LEA's or State agency's compliance with the basic standard in paragraph (a) of this section, the SEA may disregard a decrease of less than two percent from the second preceding fiscal year to the first preceding fiscal year.

(g) Substantial compliance—(1) Standard. The SEA shall consider the LEA or State agency to be in compliance with the basic standard in paragraph (a) of this section if—

(i) The LEA or State agency submits a written request asking the Secretary to determine that the LEA or State agency is in substantial compliance with the basic standard in paragraph (a) of this section;

(ii) The written request referred to in paragraph (g)(1)(i) of this section demonstrates that any decrease in expenditures from the second preceding fiscal year to the first preceding fiscal year did not result in any decrease in the level of services that the LEA or State agency provides; and

(iii) The Secretary issues a written determination that the LEA or State agency is in substantial compliance with the basic standard in paragraph (a) of this section.

(2) Example. An example of a situation that would meet the standard in paragraph (g)(1) of this section is a change in staffing at an agency resulting in a lower-paid employee providing the same level of service previously provided by a higher-paid employee.

§116.92 Waiver of the maintenance of effort requirement

(a) Waiver authority. Under section 126(a)(2) of Title I (Waiver of maintenance of effort), the Secretary may waive the maintenance of effort requirements in §116.91 for a particular LEA or State agency for one fiscal year if the Secretary determines that the waiver is equitable because of exceptional and unforeseen circumstances.

(b) Waiver request. An LEA or State agency that has not maintained its fiscal effort as required in §116.91 may ask the Secretary to grant a waiver of that requirement by submitting a waiver request that includes—

(1) A statement of the expenditures for the two fiscal years being compared;

(2) A statement of the difference between (i) the agency's level of fiscal effort in the preceding fiscal year and (ii) the agency's level of fiscal effort in the second preceding fiscal year; and

(3) A description of the circumstances that the agency considers to be "exceptional and unforeseen."

(c) Secretary's criteria. The Secretary considers granting a waiver under paragraph (a) of this section only if the Secretary determines that—

(1) The agency requesting the waiver used every opportunity available under State and local laws to maintain the necessary level of expenditures; and

(2) The failure to maintain effort was due to—

(i) A natural disaster;

(ii) A major and unforeseen decline in State or local financial resources, such as a major loss of tax base not due to public or governmental actions;

(iii) A major and unforeseen decline in Federal funds for free public education and for which the agency is not accountable to the Federal Government;

(iv) An extended strike; or

(v) Other exceptional and unforeseen circumstances, which may not include referenda or acts of State legislatures, school boards, or other governmental bodies.

(d) Actions resulting from a waiver. If the Secretary grants a waiver under paragraph (a) of this section—

(1) The SEA shall reduce the affected agency's Title I allocation for the fiscal year covered by the waiver in exact proportion to that agency's failure to maintain the effort required by §116.91;

(2) If the affected agency is an LEA, the State shall reallocate the reduction to other LEAs in the State in accordance with 45 CFR 116a.33; and

(3) For the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall determine the affected agency's compliance with the basic standard in §116.91 on the basis of the level of fiscal effort that would have been required if the affected agency had not been granted the waiver.

TITLE IV OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

P.L. 89-10 as amended 20 U.S.C. 1801 et seq.

Statutory Requirement

Public Law 95-561 (Education Amendments of 1978)

Sec. 404.(a) A State shall be eligible to receive grants under this part if it has on file with the Commissioner a general State application under section 501 or section 435 of the General Education Provisions Act, whichever is applicable, and if it submits to the Commissioner a State plan at such time (not more often than once every three years) and in such detail as the Commissioner deems necessary, which—

. . . (7) provides assurances that the aggregate amount to be expended per student or the aggregate expenditure by the State, its local educational agencies, and private schools in such State from funds derived from non-Federal sources for programs described in part B and part D, respectively, for the preceding fiscal year are not less than the amount per student expended or the aggregate expenditure for the second preceding fiscal year for each such part. 20 U.S.C. 3084(a)(7)

Regulations

45 CFR Part 134; 45 F.R. 23602 (April 7, 1980)

§134.12 Conditions the State must meet before submitting a plan—maintenance of effort

(a) General requirements. (1) To receive Part B funds, Part C funds to conduct the Strengthening SEA Management program, or Part D funds, a State shall have expended during the preceding fiscal year for the purposes of each of these programs an amount of non-Federal funds that at least equals the amount of non-Federal funds it expended for the purposes of each of these programs during the second preceding fiscal year.

(2) The comparison of expenditures for the two years may be made on the basis of—

(i) Either the aggregate non-Federal expenditures for each of these programs made by the State, its LEAs, and the private schools in the State; or

(ii) The aggregate per student expenditures of the State, its LEAs, and private schools.

(b) Aggregate expenditures. The State may measure aggregate non-Federal expenditures for programs described in Part B, Part D, or in Title IV, Part B, respectively, by either of the following methods:

(1) Totalling the expenditures made by the State, all its LEAs, and the private

schools in the State that enroll students who will participate during the fiscal year for which funds are available or

(2) Totalling the expenditures made by the State, its LEAs that will participate in the fiscal year for which funds are available, and the private schools in the State that enroll students who will participate in the fiscal year for which funds are available.

(c) Aggregate per student expenditures. The State may measure aggregate per student non-Federal expenditures for programs described in Part B, Part D, or in Title V, Part B, respectively, by either of the following methods:

(1) Dividing the aggregate expenditures computed under paragraph (b)(1) of this section by the total number of students in average daily attendance (ADA)—or any other basis commonly and consistently used in a State from year to year—in all the public schools in the State and in private schools that enroll students who will participate in the fiscal year for which funds are available; or

(2) Dividing the aggregate expenditures computed under paragraph (b)(2) of this section by the total number of students in ADA—or on any other basis commonly and consistently used in the State from year to year—in public schools in LEAs that will participate in the fiscal year for which funds are available.

(d) Averaging expenditures. (1) If non-Federal expenditures for programs described in Part B, Part D, or in Title V, Part B, depend upon a State or local appropriation that is not an annual appropriation, the State may average its non-Federal expenditures for those programs over the number of fiscal years for which the appropriation was made.

(2) A State that chooses to average its expenditures in this way shall continue to use this method for computing maintenance of effort for each fiscal year for which the State or local appropriation was made.

(3) A State that does not average its expenditures shall attribute all expenditures to the fiscal year in which they were incurred.

(e) State's authority to exclude LEAs or children enrolled in private schools. A State, by rule, may exclude from participation in Parts B or D—

(1) An LEA that has failed to maintain its non-Federal expenditures, if the Commissioner declines to waive the State's requirement to maintain its expenditures, and if that LEA's failure to maintain its expenditures would prevent the State from complying with paragraph (a) of this section;

(2) Students enrolled in a private school that has failed to maintain its expenditures, if the Commissioner declines to waive the State's requirement to maintain its expenditures, and if that private school's failure to maintain its expenditures would prevent the State from complying with paragraph (a) of this section; or

(3) An LEA, or students enrolled in a private school, that fails to submit data that the State requires to determine compliance with this section.

(f) Collecting and maintaining data. The SEA shall collect and maintain data—including data from private schools—that verify the State's compliance with this section or §§134.90-134.92 of these regulations. The State shall make these data available to the Commissioner upon request.

(g) Separate compliance. The Commissioner determines whether a State is complying with the maintenance of effort requirement separately for the programs authorized by Part B, Part D, and Title V, Part B of the Act.

§134.90 Waivers of Maintenance of Effort

Because of exceptional and unforeseen circumstances affecting one or more LEAs in a State, the Commissioner may waive the maintenance of effort requirements in §134.12, if it is equitable to do so. This waiver is effective for one fiscal year only, and may not be repeated.

(a) Examples of exceptional and unforeseen circumstances include—

(1) An unforeseen, substantial removal of property from the tax roll due to—

(i) A disaster of human or natural causes;

(ii) A government action; or

(iii) The departure of an industrial or commercial facility.

(2) An unforeseen, substantial diversion of available revenue to other purposes outside the control of the SEA or LEA due to emergency circumstances such as those resulting from a disaster of human or natural causes.

(3) An unforeseen, substantial decrease in expenditures by a State or LEA due to a strike of educational or service personnel;

(4) An unforeseen, substantial decrease in expenditures by a State or LEA due to energy shortages or other emergency circumstances;

(5) An extraordinary State or local appropriation to meet an unexpectedly acute educational need.

(b) Examples of circumstances the Commissioner does not consider to be exceptional and unforeseen include—

(1) A deliberate substantial reduction of available revenue due to an act of a State or local legislature or electorate in other than emergency circumstances; and

(2) The failure of an SEA or LEA to maintain its fiscal effort when it had the financial resources available to do so.

(c) In determining whether it is equitable to grant a waiver under subsection (a), the Commissioner considers—

(1) The extent to which the circumstances claimed to be exceptional and unforeseen were of the SEA's or LEA's own making;

(2) The extent to which the SEA or LEA attempted to maintain its expenditures for programs described in Parts B and D and the Strengthening SEA Management program despite those circumstances; and

(3) Any other relevant factors.

(Sec. 431A of GEPA and H.Rept. 95-1137, 95th Congress, 2d Sess., at 139; 20 U.S.C. 1232-1)

§134.91 Maintenance of effort waiver procedures

If a State discovers that it cannot comply with the assurance in its State plan to maintain expenditures, it shall—

(a) Promptly notify the Commissioner and request a waiver for the appropriate fiscal year and

(b) Amend its State plan to reflect the request for a waiver.

(Sec. 404(a)(7) of the Act; 20 U.S.C. 3084(a)(7))

§134.92 Effect of waiver of maintenance of effort

(a) If the Commissioner grants a waiver of maintenance of effort under §134.90, the Commissioner reduces the total amount a State may receive for that fiscal year by the exact proportion its expenditures for the preceding fiscal year fell short of its expenditures for the second preceding fiscal year. Those expenditures may be calculated on either an aggregate or aggregate per student basis.

(b) Subsequent determinations of whether that State has maintained its effort are made on the basis of the expenditures that would have been required had the Commissioner not granted a waiver.

EDUCATION OF THE HANDICAPPED ACT

P.L. 91-230, as amended 20 U.S.C. 1401 et seq.

Statutory Requirement

Public Law 94-142 (Education for All Handicapped Children Act of 1975)

Sec. 613.(a) Any State meeting the eligibility requirements set forth in section 612 and desiring to participate in the program under this part shall submit to the Commissioner, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall—

(9) provide satisfactory assurance that Federal funds made available under this part . . . (b) will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such State and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

Sec. 614.(a) A local educational agency or an intermediate educational unit which desires to receive payments under section 611(d) for any fiscal year shall submit an application to the appropriate State education agency. Such application shall—

(2) provide satisfactory assurance that . . . (B) Federal funds expended by local educational agencies and intermediate educational units for programs under this part . . . (ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant such State and local funds . . .

(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments. 20 U.S.C. 1413(a)(9); 1414(a)(2)(B); 1414(f)

Regulations

45 CFR 121a; 42 F.R. 42474 (August 23, 1977)

§121a.230 Nonsupplanting

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act to supplement and, to the extent practicable, increase the level of State and

local funds expended for the education of handicapped children, and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section:

(1) The total amount or average per capita amount of State and local school funds budgeted by the local educational agency for expenditures in the current fiscal year for the education of handicapped children must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of handicapped children in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

(i) Decreases in enrollment of handicapped children; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities; and

(2) The local educational agency must not use Part B funds to displace State or local funds for any particular cost.

§121a.589 Waiver of requirement regarding supplementing and supplanting with Part B funds

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, State and local educational agencies must insure that Federal funds provided under Part B of the Act are used to supplement the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds. Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the nonsupplanting requirement only applies to funds allocated to local educational agencies. (See §121a-372.)

(b) If the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Commissioner concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Commissioner in writing. The Commissioner then provides the State with a finance and membership report form which provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of a free appropriate public education to all handicapped children. The special study must include statements by a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas:

(1) The adequacy and comprehensiveness of the State's system for locating, identifying, and evaluating handicapped children; and

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions; and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of a free appropriate public education for all handicapped children, including:

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year, and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Commissioner considers the information which the State provides under paragraphs (d) and (e) of this section, along with any additional information he may request or obtain through on-site reviews of the State's education programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(g) The State may request a hearing under §§121a.530-121a.583 with regard to any final action by the Commissioner under this section.

VOCATIONAL EDUCATION ACT OF 1963

P.L. 88-210 as amended 20 U.S.C. 2301 et seq.

Statutory Requirement

Public Law 94-482 (Education Amendments of 1976)

General Requirement:

Sec. 111(b)(1) No payments shall be made in any fiscal year under this chapter to any local educational agency or to any State unless the Commissioner finds, in the case of a local educational agency, that the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of vocational education by that agency for the fiscal year preceding the fiscal year for which the determination was made was not less than such combined fiscal effort per student or the aggregate expenditures for that purpose for the second preceding fiscal year or, in the case of a State, that the fiscal effort per student or the aggregate expenditures of that State for vocational education in that State for the fiscal year preceding the fiscal year for which the determination was made was not less than such fiscal effort per student or the aggregate expenditures for vocational education for the second preceding fiscal year. 20 U.S.C. 2311(b)(1)

Applicability to Work Study Programs:

Sec. 121(a) Funds available to the States under section 2330 of this title may be used for grants to local educational agencies for work-study programs which—

(5) provide that, in each fiscal year during which such program remains in effect, such agency shall expend (from sources other than payments from Federal funds under this section) for the employment of its students (whether or not in employment eligible for assistance under this section) an amount that is not less than its average annual expenditure for work-study programs of a similar character during the three fiscal years preceding the fiscal year in which its work-study program under this section is approved. 20 U.S.C 2331(a)(5)

Regulations

Proposed Rules, 45 F.R. 28288 (April 28, 1980); and 45 C.F.R. 104.321-104.324.

§104.321 Maintenance of fiscal effort at the State level

A State shall maintain its fiscal effort on either a per student basis or on an aggregate basis for vocational education compared to the amount expended in the previous year.

§104.322 Withholding of payments

The Commissioner will not make any payments to a State in a fiscal year unless the Commissioner finds that the fiscal effort of the State for vocational education on a per student basis or on an aggregate basis in the previous fiscal year was not less than fiscal effort of the State on a per student basis or on an aggregate basis in the second preceding fiscal year.

§104.323 Unusual circumstances

(a) Any reduction in fiscal effort for any fiscal year will disqualify the State from receiving Federal funds unless the State is able to demonstrate to the satisfaction of the Commissioner any of the following:

(1) In the preceding fiscal year, the reduction was occasioned by unusual circumstances that could not have been fully anticipated or reasonably compensated for by the State. Unusual circumstances may include unforeseen decreases in revenues due to the decline of the tax base.

(2) In the second preceding fiscal year, contributions of large sums of monies were received from outside sources.

(3) In the second preceding fiscal year, large amounts of funds were expended for long-term purposes such as construction and acquisition of school facilities or the acquisition of capital equipment.

(b) This proposed section will apply beginning with grants awarded in Fiscal Year 1981.

§104.324 Maintenance of fiscal effort at the local level

A local educational agency shall maintain its fiscal effort on either a per student basis or on an aggregate basis for vocational education compared with the amount expended in the previous fiscal year.

§104.325 Withholding of payments

A State shall not make payment under this Act to a local educational agency unless the State finds that the combined fiscal effort of the State and local educational agency on a per student basis or on an aggregate basis of the local educational agency and the State, was not less than the combined fiscal effort in the second preceding fiscal year.

§104.326 Exception for local education agencies

The unusual circumstances rule applicable to the State in §104.323 is also applicable to local educational agencies.

THE GENERAL EDUCATION PROVISIONS ACT

P.L. 90-247, as amended 20 U.S.C. 1221 et seq.

Statutory Requirement

Public Law 95-561 (Education Amendments of 1978)

MAINTENANCE OF EFFORT DETERMINATION

Sec. 431A.(a) In prescribing regulations for carrying out the requirements of section 403(c)(10) for fiscal year 1979 and section 404(a)(7) for subsequent fiscal years of the Elementary and Secondary Education Act of 1965 and section 307(b) of the Adult Education Act, the Commissioner shall determine the amount so expended on the basis of per pupil or aggregate expenditures.

(b) The Commissioner may waive, for one fiscal year only, the requirements of this section if he determines that such a waiver would be equitable due to exceptional and unforeseen circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency. In any case in which a waiver under this subsection is granted, the Commissioner shall reduce the amount of the Federal payment for the program affected for the current fiscal year in the exact proportion to which the amount expended (either on an average per pupil or aggregate basis) was less than the amount required by section 403(a)(10) for fiscal year 1979, and section 404(a)(7) for subsequent fiscal years of the Elementary and Secondary Education Act of 1965 or section 307(b) of the Adult Education Act. No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort required, under such sections, for years subsequent to the year covered by such waiver; such fiscal effort shall be computed on the basis of the level of funding which would, but for such waiver, have been required.

(c) The Commissioner shall establish objective criteria of general applicability to carry out the waiver authority contained in this section.

(d) This section shall be effective with respect to each requirement to which it applies, during the period which begins on the date of the enactment of the Education Amendments of 1978, and ends on the date of termination of the program to which the requirement applies. For purposes of the preceding sentence, a program shall be considered to terminate on September 30 of the fiscal year, if any, during which such program is automatically extended pursuant to section 414 of the General Education Provisions Act. 20 U.S.C. 1232-1

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